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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1963

No. 963

UNIVERSITY NATIONAL STOCKHOLDERS PROTECTIVE COMMITTEE, INC.,
Petitioner,

vs.

UNIVERSITY NATIONAL LIFE INSURANCE COMPANY, ALBERT M. SCRUGGS, JOHN R. C. ELDER, JOHN COSTEN, MALCOLM DEISENROTH, JR., ROBERT LEE HOUSER, MILO C. MORGAN, SIDNEY E. LEIWANT, ROBERT L. DOBBS and RUDOLPH V. RUSSELL,
Respondents

APPENDIX TO PETITION FOR WRIT OF CERTIORARI

To the United States Court of Appeals, Sixth Circuit

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No. 15655

United States Court of Appeals

FOR THE SIXTH CIRCUIT

UNIVERSITY NATIONAL STOCKHOLDERS PROTECTIVE COMMITTEE, INC., *Petitioner*,

vs.

UNIVERSITY NATIONAL LIFE INSURANCE COMPANY, ET AL., *Respondents*.

ON PETITION FOR WRITS OF CERTIORARI, SUPERSEDEAS and MANDAMUS.

Decided March 3, 1964.

Before MILLER, CECIL and PHILLIPS, Circuit Judges.

PER CURIAM. A petition has been filed in this Court seeking writs of certiorari and supersedeas, and a writ of mandamus if required, to review an interlocutory order in this case which is now pending in the United States District Court for the Western District of Tennessee, Western Division, under the style *N. E. Dacus, et al.* v. *Barry M. Carter, et al.* The issuance of extraordinary writs by this Court is sought under the All Writs Statute, 28 U. S. C. § 1651.

The complaint was filed July 18, 1963. On August 8, 1963, petitioner filed its answer and cross-claim against other defendants. The record shows that various pretrial depositions have been undertaken and a number of motions have been made. Under date of October 24, 1963, the District Judge, the Honorable Bailey Brown, entered an

order disposing of ten motions. Petitioner concedes that this order is not a final appealable decision, but is an interlocutory decree from which an appeal will not lie. Petitioner contends that if it is required to comply with the order of the District Court of which it complains, and await review of a final decision, "it will have been severly injured and irreparably damaged in the interim." Relief is sought from the order of the District Judge in: (1) directing the attorney for petitioner to show authority to act in that capacity; (2) overruling petitioner's written motions to expunge and strike from the record the motion of another defendant to take certain pretrial depositions, and to vacate the order of the District Court commanding certain witnesses to appear and give their depositions; (3) overruling petitioner's written motion that his attorney be compensated as a witness as provided by Rule 30(g)(1), Federal Rules of Civil Procedure; (4) requiring the attorney for petitioner to produce petitioner's books and records and "work product" for examination; (5) requiring petitioner's attorney to submit to further pretrial examinations; and (6) overruling petitioner's motion to require certain other parties to appear and give pretrial depositions.

It is well settled that the supplementary relief powers granted to Courts of Appeals by the All Writs Statute are meant to be used only in exceptional cases where there is a clear abuse of discretion or usurpation of judicial power. *Bankers Life & Casualty Co. v. Holland*, 346 U. S. 379, 382; *Roche v. Evaporated Milk Association*, 319 U. S. 21, 26; *Filmore v. Kalbfleisch*, 286 F. 2d 171 (C. A. 6).

Extraordinary writs will not be used as substitutes for appeal. *Hartford Accident & Indemnity Co. v. Interstate Equipment Corp.*, 176 F. 2d 419 (C. A. 3); *Hoffa v. Gray*, 323 F. 2d 178 (C. A. 6) and cases therein cited. As said

by Chief Justice Stone in *United States Alkali Exp. Ass'n v. United States*, 325 U. S. 196, 202-03.

> "It is evident that hardship is imposed on parties who are compelled to await the correction of an alleged error at an interlocutory stage by an appeal from a final judgment. But such hardship does not necessarily justify resort to certiorari or other of the extraordinary writs as a means of review. In such cases appellate courts are reluctant to interfere with decisions of lower courts, even on jurisdictional questions, which they are competent to decide and which are reviewable in the regular course of appeal. [Citing cases.] The writs may not be used as a substitute for an authorized appeal: and where, as here, the statutory scheme permits appellate review of interlocutory orders only on appeal from the final judgment, review by certiorari or other extraordinary writ is not permissible in the face of the plain indication of the legislative purpose to avoid piecemeal reviews."

We find no abuse of discretion or usurpation of judicial power on the part of the District Court in this case.

The petition for writs of certiorari, supersedeas and mandamus is denied.

PETITION FOR THE WRITS OF CERTIORARI AND SUPERSEDEAS

TO THE HONORABLE JUDGES OF THE UNITED STATES COURT OF APPEALS, SIXTH CIRCUIT:

Petitioner would respectfully show and represent to the Court:

I

On July 18, 1963, J. T. Street, Jr., Bobbie S. Street, Falba Simmons, Curtis A. Greer and a number of other

individuals, all being citizens and residents of the State of Mississippi, and owners of stock in University National Life Insurance Company, a corporation organized and existing under the laws of the State of Tennessee with its principal place of business or Home Office at Memphis, Tennessee, brought suit in the United States District Court for the Western District of Tennessee, Western Division, in their individual capacities as stockholders of said life insurance company and for the use and benefit of all other stockholders similarly situated, it being alleged that there were approximately 8,000 stockholders in all owning more than 1,300,000 shares of stock in this corporation, against the directors of the corporation and others under the provisions of Title 28, Section 1332, U.S.C.A., averring that there was a complete diversity of citizenship between Plaintiffs and Defendants and that the matter in controversy exclusive of interest and costs exceeded $10,000.00.

II

The primary purpose of the Complaint was the recovery of what Plaintiffs alleged to be a loss of more than two million dollars ($2,000,000.00) resulting from mismanagement of the corporate affairs of University National Life Insurance Company and waste of its funds and assets by its officers and directors. It was alleged that demand had been made upon the corporation and its recently elected directors to bring a suit to recover the funds and assets so wasted but that they had refused to take such action.

Also named as Defendants were Petitioner herein and eight of its directors alleging that the said eight directors had filed a suit in the Chancery Court of Shelby County, Tennessee, seeking substantially the same relief as sought by Plaintiffs in the United States District Court, and that said suit had been dismissed by the Chancery Court. Com-

plainants without the consent of the other stockholders and without notice to them.

III

On August 8, 1963, Petitioner filed its answer and Cross-Claim against Defendants University National Life Insurance Company, Albert M. Scurggs, John R. C. Elder, John Costen, Malcolm Deisenroth, Jr., Robert Lee Houser, Milo C. Morgan, Sidney E. Leiwant, Robert L. Dobbs and Rudolph V. Russell, Respondents herein, seeking a judgment against them in its favor for $48,781.28, a judgment for the benefit of Defendant University National Life Insurance Company for all funds and the monetary equivalent of other things of value belonging to University National Life Insurance Company spent in the defense of its officers and directors who are determined to have inflicted damage upon and injury to it, either by corruption, waste, mismanagement, misconduct, immorality or scandalous behavior, and those who permitted such acts and practices through gross negligence or ethical indifference.

The Cross-Claim also sought certain declaratory relief and a judgment for punitive damages.

No other responsive pleadings were filed, all other Defendants and Cross-Defendants having filed Motions To Dismiss, Motions To Enlarge the time in which to plead and a Motion To Require Attorneys for Cross-Plaintiff to Show Authority to act as attorneys for Cross-Plaintiff.

IV

Defendant University National Life Insurance Company served notice upon Plaintiffs that it desired to take the pretrial discovery depositions of Plaintiffs on August 6, 1963, to which Plaintiffs filed a motion to stay the taking

thereof on the ground that the Motion To Dismiss the Complaint filed by said Defendant would be dispositive of the Complaint if sustained by the Court.

The taking of Plaintiffs' depositions were not taken according to notice given but by agreement between attorneys for Plaintiffs and Defendant University National Life Insurance Company postponed until Plaintiffs' Motion to Stay taking of the same, and Defendant's Motion to Dismiss could be heard by the Court and disposition made thereof. The Court, on September 6, 1963, granted leave to Plaintiffs to amend their Complaint to cure the defect upon which Defendant life insurance company predicated its Motion to Dismiss and on September 11, 1963, said Defendant served notice upon attorney for Plaintiffs that it desired to take Plaintiffs' depositions in its attorney's office in Memphis, Tennessee, on September 19, 1963. Plaintiffs moved the Court to order the depositions taken in a central location rather than requiring Plaintiffs to travel great distances to Memphis, or in the alternative that their depositions be taken by interrogatories, which motion was, on September 19, 1963, overruled by the Court and said depositions ordered to be taken on September 20, 1963.

The attorney for Petitioner suffers from an allergy to autumn pollens (ragweed, goldenrod, etc.) resulting in severe vertigo completely disabling him when afflicted. He was overcome by this disability beginning on or about September 17, 1963, and extending through more than the first fifteen days of October, 1963, and he was unable to attend the Court proceedings on September 19, 1963, and on September 19, 1963, filed a sworn petition with the certificates of two physicians attached seeking a delay in the taking of Plaintiffs' depositions, which petition the Court peremptorily overruled.

Plaintiffs' attorney was unable to give his clients sufficient notice and the depositions of Plaintiffs were not t ken until October 1, 1963. Petitioner's attorney was forced to attend the taking of these depositions under the aforedescribed disability which renders him unsteady upon his feet and, at times, nauseated, and disrupts his equilibrium when required to move from a stationary position.

V

On September 6, 1963, Defendant Robert L. Dobbs procured and caused to be issued subpoenas requiring J. R. Tipler, Rudolph Russell, W. F. Jameson, George A. Davis, Barry M. Carter, J. D. McElroy, R. T. Matthews, Luke Borger, Vernon Goedecke, Roy E. Barnette, Carl J. Gates and Robert L. Taylor to appear in Defendant Dobbs' office at 10:00 o'clock a.m., September 16, 1963. However, he failed to give notice as required by Rule 45(d)(1) of the Federal Rules of Civil Procedure and failed to tender the witnesses the attendance fees and mileage as required by Rule 45(c) of the Federal Rules of Civil Procedure.

Petitioner and witnesses J. R. Tipler, George A. Davis, Barry M. Carter, R. T. Matthews, Luke Borger, Vernon Goedecke, Carl J. Gates and Robert L. Taylor, filed a written motion to quash said subpoenas for the reasons and on the grounds hereinabove stated.

Defendant Dobbs, apparently as an afterthought, on September 8, 1963, mailed out the notices required by Rule 45(d)(1) and certified in and by the name of Thomas *H.* Douglas, Jr., that the said notices had been served upon adversary counsel on September 6, 1963.

The District Judge had previously held that a motion to quash a subpoena requiring a witness to appear and give his deposition was a self executing instrument that had the

effect of staying the taking of the deposition until disposition was made of the motion. Accordingly J. R. Tipler, George A. Davis, Barry M. Carter, R. T. Matthews, Luke Borger, Vernon Goedecke, Carl J. Gates and Robert L. Taylor did not appear to give their depositions on September 16, 1963, being advised by counsel that the subpoenas were void and inoperative.

VI

On September 23, 1963, Defendant Robert L. Dobbs filed a "Motion To Require *Plaintiffs* (sic) To Appear and Give Depositions", which sought an order of the Court requiring J. R. Tipler, Robert L. Taylor, George A. Davis, Barry M. Carter, Luke Borger, Vernon Goedecke and Carl J. Gates, none of whom are Plaintiffs or Cross-Plaintiffs in this cause, to appear and give their depositions "under penalty of being in contempt" of Court, inferring if not alleging that said persons had violated an order of the Court.

A notice was appended to said motion addressed to attorneys for the witnesses notifying them to appear before the District Judge at 4:30 p.m. on Tuesday, September 24, 1963, and stating that the matter would at that time be heard by the Court.

Thomas E. Douglas, Jr., attorney for Defendant Robert L Dobbs, certified that he had served a copy of said motion and notice upon the attorneys for the witnesses against whom an order to appear and give their depositions was sought by delivering a copy of the same at their offices. No such motion or notice was served upon any of the three attorneys in any manner and for that reason they failed to appear before the Court at the appointed time.

Pursuant to said motion and notice, in an ex parte proceeding, the Court overruled the motion of said wit-

nesses to quash the subpoenas served upon them and ordered them to appear at the office of the Clerk of the United States District Court, Western District of Tennessee, Western Division, Federal Building at Memphis, Tennessee, at 9:30 a.m. on October 2, 1963, then and there to give their depositions, the order directing Defendant Dobbs to give notice as required by Rule 45(d)(1) but it waived the obligation upon Defendant Dobbs requiring him to tender mileage, in violation of their rights under the Federal Rules of Civil Procedure and the laws and the Constitution of the United States of America.

On or about September 26, 1963, an order was entered in this cause in accord with the ruling of the Court of September 24, 1963, and Defendant Dobbs procured and caused to be served by the office of the United States Marshal, subpoenas for J. R. Tipler, George A. Davis, Barry M. Carter, J. D. McElroy, R. T. Matthews, Luke Borger, Vernon Goedecke, Carl J. Gates and Robert L. Taylor, requiring each of them to appear at the office of the United States District Court Clerk on October 2, 1963, at 9:30 o'clock a.m. to give their depositions, a copy of the Court's order of September 26, 1963, being attached to each subpoena for the purpose of frightening and intimidating the prospective witnesses.

The subpoena served upon Robert L. Taylor commanded him to bring with him "all minute books, minutes of directors and stockholders meetings, minutes of meetings of liquidating agents, stock books, bank account statements, books and/or ledgers of account and financial records of any type whatsoever of University National Stockholders Protective Committee, Inc."

On or about the same day, September 26, 1963, Defendant Dobbs served notice upon all counsel representing

parties to this litigation that he would on October 2, 1963, take the depositions of the witnesses for whom he had procured subpoenas, continuing from day to day until completed.

VII

On October 1, 1963, Defendants J. R. Tipler, George A. Davis and Barry M. Carter, and Defendant and Cross-Plaintiff University National Stockholders Protective Committee, Inc., served notice upon adversary counsel that they would on October 8, 1963, at 2:00 o'clock p.m., take the depositions of Defendants and Cross-Defendants Robert L. Dobbs and Rudolph V. Russell, and their attorney, Thomas E. Douglas, Jr.

On October 2, 1963, subpoenas issued for Dobbs, Russell and Douglas commanding them to appear and give their depositions on October 8, 1963, in accord with the notice previously issued on October 1, 1963, and the same were duly and promptly served upon said witnesses.

VIII

J. R. Tipler, George A. Davis, Barry M. Carter, J. D. McElroy, Luke Borger, Carl J. Gates and Robert L. Taylor appeared at the office of the Clerk on October 2, 1963, at 9:30 o'clock a.m., and depositions were taken on October 2 and October 3, 1963, at which time they were adjourned until October 7, 1963. By October 7, 1963, all depositions of subpoenaed witnesses had been taken except that of Robert L. Taylor.

On October 7, 1963, Robert L. Taylor appeared at the office of the Clerk at 9:30 o'clock a.m. as required by the subpoena served upon him and as provided by the notice, and remained within the immediate vicinity (50 feet, on the same floor level) in full view of everyone concerned,

and in conversation with most of adversary counsel. At 10:00 o'clock a.m. he requested that the taking of his deposition proceed. He was advised that this could not be begun until Dobbs, his lawyer and the Court stenographer arrived. The witness waited until 10:10 o'clock a.m., at which time he stated that if Dobbs and his lawyer were no more interested than manifested by them, he did not feel required or obligated to wait any longer, and that he was leaving, and he then departed.

Upon a subsequent request of attorney for Defendant Dobbs, Robert L. Taylor agreed to and did present himself for examination in the offices of Canada, Russell & Turner, attorneys for Defendant Marshall P. Scott, at approximately 2:15 p.m. o'clock on the afternoon of October 7, 1963, and gave his deposition as commanded by the subpoena served upon him, even though adversary counsel had forfeited their right to take his deposition under and upon the authority of the subpoena issued September 26, 1963, commanding him to appear on October 2, 1963, at 9:30 o'clock a.m.

At approximately 6:03 p.m. on October 7, 1963, after examination of said witness had been concluded by all adversary counsel except the attorney for Defendant Marshall P. Scott, who, according to information and belief, has filed no plea to Plaintiffs' Complaint, and who is otherwise neither a Cross-Plaintiff or Cross-Defendant, and with whom there exists no dispute with Petitioner or witness Taylor in this or other causes, at which time adversary counsel advised the witness that the taking of his deposition was being adjourned until 1:30 o'clock p.m. on the next day, October 8, 1963. The witness requested that they conclude his examination and advised adversary counsel that he was unwilling to enter into any agreement to adjourn to any time other than as provided by Defendant

Dobbs' notice and subpoena, and the Federal Rules of Civil Procedure. Accordingly, he presented himself at the office of the Clerk of the District Court on October 8, 1963, at 9:30 o'clock a.m. as required by the subpoena and notice served upon him, and after waiting until 9:50 o'clock a.m., he departed when neither adversary counsel, Defendant Dobbs or the Court stenographer made an appearance.

IX

On October 8, 1963, at approximately 1:30 o'clock p.m., Thomas E. Douglas, Jr., attorney for Defendant Dobbs, telephoned Robert L. Taylor and advised him that all adversary counsel were assembled in the office of Canada, Russell & Turner waiting for the witness to present himself for further examination. Defendant Dobbs and his associates had forfeited their right to examine the witness further when they failed to appear at the office of the Clerk of the District Court at 9:30 o'clock a.m. on that morning, October 8, 1963, and the witness could not be compelled, under any circumstances, to attend and present himself for the taking of his deposition at any place other than as directed by the notice and subpoena. Moreover, Petitioner is advised and believes that all adversary counsel were not present in said office as asserted by Mr. Douglas.

Mr. Douglas was advised that they could remain there in the offices of Canada, Russell & Turner if they so chose but that Defendants Tipler, Davis and Carter, and Defendant and Cross-Plaintiff University National Stockholders Protective Committee, Inc., had given notice and caused subpoenas to be issued and served upon Dobbs, Russell and Douglas to present themselves at the offices of Taylor & Taylor, 208 Adams Avenue in Memphis at 2:00 o'clock p.m. (of that day, October 8, 1963) and that they were expected to attend. Dobbs, Russell and Douglas replied

that they would not give their depositions until Taylor had concluded his, although he had concluded it as far as they and their respective clients were concerned.

On this same day, at approximately 1:55 p.m. o'clock, Dobbs, Russell and Douglas, and all the other lawyers involved in this case, arrived at the office of Taylor & Taylor. The Court reporter arrived before 2:00 p.m. Dobbs, Russell and Douglas again announced that they refused to give their depositions until Taylor's had been concluded. When Taylor refused on the basis that the place and time had been designated for taking the depositions of Dobbs, Russell and Douglas, Dobbs, Russell and Douglas, and all adversary attorneys departed with the statement that they intended to take the matter up with the Judge of the District Court.

X

Attorneys for all the parties appeared before Judge Brown at 9:00 o'clock a.m. on October 9, 1963. Upon the oral application of Defendant and Cross-Defendant, Robert L. Dobbs, the District Judge ordered Robert L. Taylor to give further testimony by deposition before Dobbs, Russell and Douglas should be required to give their depositions.

XI

At the taking of his deposition on October 7, 1963, Robert L. Taylor stated that he had brought with him all of the documents in his possession which he had been commanded to bring by the subpoena issued on behalf of Defendant Dobbs, but he refused to exhibit them for the following reasons:

(1) Defendant Dobbs was neither an officer, director or stockholder of University National Stockholders Protective Committee, Inc., and, therefore, had

no vested right in the affairs of that corporation, or the right to examine its books and records.

(2) No party to the litigation, except Petitioner herein, had filed a responsive plea.

(3) There was no claim asserted in any of the pleadings that the stockholders had not paid in to the corporation the stated value of stock issued, or that there had been any misuse or misappropriation of this corporation's funds, or that the corporation's officers or directors had committed ultra vires acts.

(4) The books and records were of a confidential nature and privileged to its stockholders.

Upon the oral application of Defendant Dobbs, the District Judge directed Robert L. Taylor to produce for examination by all parties those items or documents listed in the subpoena duces tecum issued at the request of Defendant Dobbs on September 26, 1963, and served upon Robert L. Taylor on or about September 27, 1963.

XII

Under date of October 11, 1963, Petitioner and Defendants Barry M. Carter, George A. Davis, J. R. Tipler, Luke Borger, Vernon Goedecke, R. T. Matthews, Carl J. Gates and their attorney, Robert L. Taylor, moved the Court to quash the subpoena served upon Robert L. Taylor requiring him to produce the documents hereinabove set out and as he was commanded to produce under the subpoena duces tecum issued on September 26, 1963, and to expunge and strike from the record the motion of Defendant and Cross-Defendant, Robert L. Dobbs, to require Plaintiffs (sic) to give pre-trial depositions. On the same day Robert L. Taylor, attorney for said Defendants and Petitioner herein, moved the Court to require Defendant and Cross-Defendant Robert L. Dobbs to compensate him

by reason of the failure of Defendant Dobbs to attend the taking of the deposition of Robert L. Taylor pursuant to notice on October 7 at 9:30 o'clock a.m. and October 8 at 9:30 o'clock a.m. as provided by Rule 30(g)(1) of the Federal Rules of Civil Procedure.

XIII

By written order dated October 24, 1963, and filed the same day, the Court took the following action to which Petitioner objects and complains:

(1) It directed Robert L. Taylor to establish and show his authority to file an answer on behalf of Defendant University National Stockholders Protective Committee, Inc., and a cross-claim in its behalf as Cross-Plaintiff.

(2) It reaffirmed its action in overruling the written motion of Defendants Barry M. Carter, et al., and their attorney, Robert L. Taylor, to quash the subpoena issued on September 6, 1963, requiring them to give their depositions on September 16, 1963.

(3) It sustained the written motion of Defendant and Cross-Defendant Robert L. Dobbs to require Robert L. Taylor to appear and give his deposition.

(4) It denied and overruled the written motion of J. R. Tipler, et al., and their attorney, Robert L. Taylor, to expunge and strike from the record in this cause the motion of Defendant and Cross-Defendant Robert L. Dobbs to require J. R. Tipler, George A. Davis, Barry M. Carter, Luke Borger, Vernon Goedecke, R. T. Matthews, Carl J. Gates and Robert L. Taylor to give their depositions on October 2, 1963, and to set aside and vacate the Court's order entered September 26, 1963.

(5) It denied and overruled the written motion of Robert L. Taylor to require Defendant and Cross-

Defendant Robert L. Dobbs to compensate him for his failure to appear in accordance with notice and subpoena served upon said witness as provided by Rule 30(g)(1) of the Federal Rules of Civil Procedure.

(6) It overruled the motion of Barry M. Carter, et al., and their attorney, Robert L. Taylor, to quash the subpoena issued on September 26, 1963, requiring Robert L. Taylor to produce the minute books, minutes of meetings of the directors, liquidating agents and stockholders of University National Stockholders Protective Committee, Inc., its stock books, bank account statements, books and/or ledgers of account and financial records and directed him to appear in the offices of Thomas Price, Esq., in the Union Planters Bank Building, 67 Madison Avenue, Memphis, Tennessee, on Monday, October 21, 1963, at 9:30 o'clock a.m. and then and there subject said records to the examination of all of the parties to this litigation and their attorneys of record.

XIV

Petitioner is very much aggrieved by the actions of the learned District Judge as above related and would respectfully show that he acted arbitrarily, capriciously and illegally in making the following orders:

(1) Refusing to stay the taking of the depositions of Plaintiffs while attorney for Petitioner was ill, as certified by two physicians.

This was error because Petitioner and its director Defendants were entitled to be represented at the taking of the depositions of Plaintiffs. The Court took the position that Petitioner's attorney could at a subsequent date cross-examine Plaintiffs if it desired to do so. In one respect this offered some advantages to Petitioner and its director Defendants in that they could wait until the depositions were written up and delay cross-examination until they

had been examined and analyzed. On the other hand, it would have put Petitioner to an expense in excess of five (5) times the expense which it would have been required to incur if it had been represented by counsel at the taking of Plaintiffs' depositions in the normal manner. Moreover, we think Petitioner and its director Defendants were entitled to have their attorney present to object to objectionable questions and answers and to see that the proceeding was conducted in a legal and lawful manner.

It is true that the depositions of Plaintiffs were not taken on September 20, 1963, to which Petitioner's motion to stay was directed, but they were by order of the Court taken on October 1, 1963, while Petitioner's attorney was still incapacitated and disabled and he was forced to attend under disadvantageous conditions and Petitioner feels itself to have been injured as a result. It avers that it was thus deprived of its property without due process of law as guaranteed to it by the State of Tennessee and the United States of America. It also avers that it has been denied its constitutional right to equal protection, privileges and immunities under the law.

(2) Overruling the written motion of the attorney for Petitioner, and the motion of J. R. Tipler, George A. Davis, Barry M. Carter, R. T. Matthews, Luke Borger, Vernon Goedecke, and Carl J. Gates to quash the subpoenas issued for them and the other witnesses on September 6, 1963, requiring them to appear and give their depositions on September 16, 1963.

This was error because the subpoenas requiring the witnesses to appear and give their depositions were procured by Defendant Dobbs on September 6, 1963, while the notice as required by Rule 45(d)(1) was not served upon attorney for Petitioner and its director Defendants, or upon the attorney for the prospective witnesses, until September

8, 1963, at which time Defendant Dobbs deposited the notice in a United States Mail receptacle, or mailbox. Cf. Srybnix v. Epstein, D.C.N.Y. 1952, 13 F.R.D. 248.

Defendant Dobbs did not tender with the subpoenas procured by him the attendance fee and mileage allowance as required by Rule 45(c).

> (3) Directing and commanding J. R. Tipler, George A. Davis, Barry M. Carter, R. T. Matthews, Luke Borger, Vernon Goedecke, and Carl J. Gates, and their attorney, Robert L. Taylor, to appear and give their depositions in an ex parte proceeding.

This was error because the Court had been provided with an affidavit that the attorney for Petitioner and its director Defendants was ill and the motion seeking to require and command the witnesses to appear and give their depositions shows on its face that their attorney was given only 24 hours notice to appear and which time was wholly inadequate even if he had received notice of the proceeding.

Attorney for Defendant Dobbs certified that he had served a copy of his motion to require the witnesses to appear and give their depositions upon attorney for the witnesses on September 23, 1963, wherein their attorney was notified to appear before the Judge of the District Court at 4:30 o'clock p.m. on September 24, 1963. In view of the affidavit of Robert L. Taylor that he was incapacitated by the fall pollens, supported by the certificates of two (2) practicing physicians, and in view of the very short notice appearing upon the face of the notice and motion, the Court was on notice that either the notice had not been received or that attorney for the witnesses was unable to attend because of his disabilities as hereinabove set out.

(4) Directing and commanding witnesses to appear and give their depositions and authorizing subpoenas to issue as against them to appear and give their depositions without the necessity of a tender to each of said witnesses of the mileage allowance as provided and required by Rule 45(c) of the Federal Rules of Civil Procedure.

This was error because Rule 45(c) of the Federal Rules of Civil Procedure provides as follows:

> "Service of a subpoena upon a person named therein shall be made by delivering a copy thereof to such person and *by tendering to him the fees for one day's attendance and the mileage allowed by law.*"

Section 1821 of Title 28 of United States Code Annotated provides as follows:

> "A witness attending in any court of the United States, or before a United States commissioner, or before any person authorized to take his deposition pursuant to any rule or order of a court of the United States, shall receive $4 for each day's attendance and for the time necessarily occupied in going to and returning from the same, *and 8 cents per mile for going from and returning to his place of residence.*"

We have searched the authorities for a decision as to whether or not a subpoena served without mileage is void and inoperative and we are unable to find any opinion on this particular subject. It appears certain that Rule 45(c) of the Federal Rules of Civil Procedure and Section 1821 of Title 28, U.S.C.A., leave no question for doubt. We do not believe that the Judge of the District Court possesses the authority and power to abridge Rule 45(c) and Section 1821, Title 28, U.S.C.A., and that having done so he acted in excess of jurisdiction.

(5) Waiving the provisions of Rule 45(c) requiring the tender of the mileage allowance of eight cents ($.08) per mile to and from the place to which the witnesses are commanded by subpoenas.

This was error for the same reasons ascribed above. The Court obviously acted in excess of jurisdiction in denying Petitioner's directors the right to mileage as provided by Title 28, Section 1821 of the United States Code.

(6) Directing attorney for Petitioner to show authority to act as attorney for Petitioner.

This was error because there is no provision in the Federal Rules of Civil Procedure or the United States Code providing for any such plea or defense.

Rule 12(b) of the Federal Rules of Civil Procedure is as follows:

"Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion: (1) lack of jurisdiction over the subject matter, (2) lack of jurisdiction over the person, (3) improper venue, (4) insufficiency of process, (5) insufficiency of service of process, (6) failure to state a claim upon which relief can be granted, (7) failure to join an indispensable party. A motion making any of these defenses shall be made before pleading if a further pleading is permitted. No defense or objection is waived by being joined with one or more other defenses or objections in a responsive pleading or motion. If a pleading sets forth a claim for relief to which the adverse party is not required to serve a responsive pleading, he may assert at the trial any defense in law or fact to that claim for relief. If, on a motion asserting the defense numbered (6)

> to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56."

Defendant Dobbs contended that this plea was authorized by Rule 11 of the Federal Rules of Civil Procedure. We cannot read into Rule 11 any such authorized procedure. The Court did not find authority in Rule 11 for such procedure and held that it was sui generis. We, of course, recognize the rule making authority of the District Courts in a limited manner and to a limited extent. We are unable to find any authority granting to the District Courts the right, power or authority to create and establish rules contrary to the Federal Rules of Civil Procedure, or to give birth to rules governing the pleas authorized under the law and the Federal Rules of Civil Procedure, sui generis or otherwise.

> (7) Overruling the written motion of attorney for Petitioner and J. R. Tipler, et al., to expunge and strike from the record the motion of Defendant Dobbs to require J. R. Tipler, George A. Davis, Barry M. Carter, Luke Borger, Vernon Goedecke, R. T. Matthews, Carl J. Gates, and their attorney, to appear and give their depositions on October 2, 1963.

This was error because neither the motion of Defendant Dobbs to require these witnesses and their attorney to give their depositions filed on September 23, 1963, nor the notice to appear before the District Court on September 24, 1963, was served upon the witnesses or their attorney, or attorneys, and this fact, as set forth in the affidavits of Robert L. Taylor, Robert E. Joyner and Lloyd C. Kirkland,

Jr., in support of the motion to expunge and strike from the record Defendant Dobbs' motion, was not contradicted or repudiated by Defendant Dobbs or his attorney.

This is a very serious matter for which sanctions should be applied and Petitioner feels the learned and tolerant District Judge should have, at the very least, expunged the motion from the record.

The District Judge had the facts before him when the motion to expunge was overruled and he overruled the same without so much as a bland denial by Dobbs or his attorney. Because the Court failed to strike the subject motion of Defendant Dobbs it is made to appear that Petitioner and its director Defendants, and their attorneys, have acted with disrespect for the Court when they had no notice of the motion or the hearing on September 24, 1963. Petitioner avers that the insufficiency of the notice as it appears upon the record is adequate reason for striking Dobbs' motion, without further grounds being given.

(8) Overruling the written motion of attorney for Petitioner and J. R. Tipler, et al., to set aside and vacate the Court's order entered September 26, directing and commanding said witnesses to appear and give their depositions on October 2, 1963.

This was error for the reasons assigned immediately above and in addition thereto the Court was on notice that the attorney for Petitioner and the witnesses affected by the order was disabled by a hayfever condition which had prevented his attendance on September 19 and September 20. The Court recalled that Petitioner's attorney was not present on the 24th of September when Defendant Dobbs' motion was brought to its attention, and the evidence of lack of notice and insufficiency of notice as a matter of law required the Court to set aside its order entered September

26, 1963, directing these witnesses to appear and give their depositions.

Rule 6(d) of the Federal Rules of Civil Procedure requires five days notice and the Court was not justified in abridging this Rule and acted in excess of jurisdiction in hearing the motion in the first instance.

(9) Overruling the motion of attorney for Petitioner to require Defendant Dobbs to compensate him as provided by Rule 30(g)(1) of the Federal Rules of Civil Procedure.

This was error because Petitioner and its attorney have been denied their right to equal privileges, protection and immunities as provided for them by Rule 30(g)(1).

When Defendant Dobbs and his attorney failed to appear at 9:30 o'clock a.m. on the morning of October 7, 1963, and again at 9:30 o'clock a.m. on the morning of October 8, 1963, after causing Petitioner's attorney to attend by notice and subpoena, first on October 2, 1963, at 9:30 o'clock a.m., and then from day to day thereafter until completed, Petitioner's attorney was put to great inconvenience and was forced to lose a great deal of his time.

It is this type of irresponsible conduct to which Rule 30(g)(1) was directed and it is this type of evil it was intended that the Rule would prevent.

Petitioner's attorney was further inconvenienced and injured when Defendant Dobbs and his attorney refused to submit to examination by deposition on October 8, 1963, as they had been notified and subpoenaed to do. Petitioner confesses that Rule 30(g)(1) does not provide any protection to Petitioner in this last instance, if the rule is construed "to the letter." If, on the other hand, it is applied according to its spirit and intent, Petitioner and its attorney

are entitled to be compensated just as in the two former instances.

(10) Overruling the written motion of Petitioner and others to quash the subpoena issued September 26, 1963, requiring attorney for Petitioner to produce the books and records of University National Stockholders Protective Committee, Inc.

This was error for several reasons:

(a) No mileage allowance was tendered as required by Rule 45(c) of the Federal Rules of Civil Procedure.

(b) Defendant Dobbs, who procured the subpoena, is not a stockholder, director or officer of University National Stockholders Protective Committee, Inc., and therefore, has no such interest in Petitioner as to permit him to examine its books and records.

(c) There is no pleading in this cause, either affirmative or defensive, or dilatory, alleging misuse or misappropriation of the corporate funds, the violation of the laws of this State relating to corporations or the commission of an ultra vires act.

(d) The documents sought for examination are privileged. They consist of memoranda prepared by Petitioner's attorney for the information and guidance of Petitioner's board of directors, confidential lists of contributors and expenditures, and could not under any stretch of the imagination be germane to this suit or the existing issues of fact or law. If Petitioner is required to make public the information sought several hundred contributors' names will be exposed to the "old guard" and will be subject to harassment. If the Court requires Petitioner's attorney to comply with the subpoena as it relates to Petitioner's private and confidential records, and its attorney's work product and confidential records, it will thwart and stifle the efforts of stockholders of other corporations in their

attempts to unseat corrupt and incompetent officers and directors.

(11) Granting the oral motion or application of Defendant Dobbs to require Robert L. Taylor to appear and submit to further examination.

This was error because Robert L. Taylor had presented himself for examination on October 7, 1963, at 9:30 o'clock a.m., and at 2:15 o'clock p.m., and on October 8, 1963, at 9:30 o'clock a.m. When Defendant Dobbs and his attorney failed to appear at 9:30 o'clock a.m. on October 7 and October 8, he forfeited his right to further examination without the issuance of a new notice and a new subpoena and it is doubtful that he retained the right to re-examine this witness under those conditions.

Attorneys for all parties having a dispute with Petitioner in this cause had concluded their examination on the afternoon of October 7, 1963. Adversary counsel arbitrarily and without authority adjourned the deposition until 1:30 o'clock p.m. the following day. The notice and subpoena set the time for commencement each day at 9:30 o'clock a.m.

The Court should be advised that this is an arms' length contest. Counsel had so advised the District Judge and had agreed that "no quarter would be given, and none asked."

This does not present a very pretty picture and would seem to reflect upon the lawyers involved. However, Defendants Dobbs and Russell, and their attorneys, through their course of conduct, rendered any other relationship impossible.

(12) Granting the oral motion or application of Defendant Dobbs to require Robert L. Taylor to appear and submit himself for further pre-trial examination

before Defendants Dobbs and Russell, and Thomas E. Douglas, Jr., were required to give their depositions.

This was error because Dobbs, Russell and Douglas had been properly notified and subpoenaed to appear and give their depositions on October 8, 1963, at 2:00 o'clock p.m. On the other hand, they had forfeited their right to further examination of Petitioner's attorney. Dobbs, Russell and Douglas constitute a team or combination which, without the more favorable reflections, resembles "Tinkers to Evers to Chance."

Russell is a Defendant and Cross-Defendant.

Dobbs is Russell's attorney of record in this cause.

Dobbs is himself a Defendant and Cross-Defendant.

Douglas is Dobbs' attorney of record in this cause. He is also either a partner of Dobbs in the practice of law or an associate. They occupy offices together.

Petitioner is having a difficult time distinguishing between lawyer and client.

(13) Granting the oral motion or application of Defendant Dobbs to require Petitioner's attorney to produce for examination the books and records of Petitioner corporation.

This was error for reasons heretofore given.

(14) Granting the oral motion or application of adversary counsel to require Petitioner's attorney to submit Petitioner's books and records to all the parties to this litigation and their attorneys.

This was also error for reasons heretofore given. Moreover, the order of the Court directed that the privileged and confidential material be made available to all parties

and their lawyers, whether or not there was an existing dispute between them and Petitioner.

(15) Granting the oral motion or application of adversary counsel to be permitted to examine Petitioner's attorney relating to Petitioner's books and records.

This was error for reasons heretofore assigned.

(16) Overruling the written motion of Petitioner to require Defendants Dobbs and Russell, and Thomas E. Douglas, Jr., to give their depositions on October 17, 1963.

This was error because a notice had been served upon adversary counsel that Petitioner would take the depositions of Dobbs, Russell and Douglas on October 8, 1963, at 2:00 o'clock p.m. in the offices of Taylor & Taylor, 208 Adams Avenue, Memphis, Tennessee, and had procured subpoenas requiring their attendance for that purpose, which notice and subpoenas the said witnesses wilfully and intentionally ignored, violated and disobeyed.

The Court had granted and sustained a similar motion of Defendant University National Life Insurance Company as to Plaintiffs, and a similar motion of Defendant Dobbs as to certain other witnesses, most of whom were directors of Petitioner corporation. In denying Petitioner's motion for the same relief the Court denied it equal protection, privileges and immunities under whatever law it granted the prior motions of Defendants Dobbs and University National Life Insurance Company.

RELIEF SOUGHT

Petitioner has not intentionally sought to pick fault with every act of the learned District Judge. It has not complained of all orders for which it feels a complaint

would lie. However, some of the determinations of the Court, your Petitioner must admit, have been rendered moot by subsequent events. These were pointed out to emphasize the errors which remain to be corrected and to which this petition is addressed. Basically, Petitioner seeks relief from the following orders of the District Court which remain executory:

(1) The order directing attorney for Petitioner to show authority to act as attorney for Petitioner.

(2) The order overruling the written motion of attorney for Petitioner and its director Defendants to expunge and strike from the record the motion of Defendant Dobbs to require J. R. Tipler, George A. Davis, Barry M. Carter, Like Borger, Vernon Goedecke, R. T. Matthews, Carl J. Gates, and Robert L. Taylor, to appear and give their depositions.

(3) The order overruling the written motion of attorney for Petitioner and its director Defendants to set aside and vacate the Court's order directing and commanding witnesses J. R. Tipler, et al., to appear and give their depositions.

(4) The order overruling the written motion of attorney for Petitioner to require Defendant Dobbs to compensate him as provided by Rule 30(g)(1) of the Federal Rules of Civil Procedure.

(5) The order requiring attorney for Petitioner to provide Petitioner's books and records and his work product for examination.

(6) The order requiring Robert L. Taylor to submit to further pre-trial examination.

(7) The order overruling Petitioner's written motion to require Defendants Dobbs and Russell, and Thomas E. Douglas, Jr., to appear and give their depositions.

A copy of the general order of the District Court entered October 24, 1963, making the above orders is attached hereto as Exhibit "A".

A copy of the Complaint of Plaintiffs is attached hereto as Exhibit "B".

A copy of Amendment To Complaint and a copy of the Second Amendment To Complaint are attached hereto as Exhibits "C" and "D".

A copy of the Answer And Cross-Claim of Petitioner is attached hereto as Exhibit "E".

A copy of the written motion of attorney for Petitioner and its director Defendants To Expunge And Strike From The Record The Motion of Cross-Defendant Robert L. Dobbs To Require Plaintiffs (sic) To Give Pre-Trial Depositions and to set aside and vacate its order sustaining the same is attached hereto as Exhibit "F".

A copy of the written motion of Petitioner's attorney To Require Robert L. Dobbs To Compensate Him under the provisions of Rule 30(g)(1) is attached hereto as Exhibit "G".

A copy of Petitioner's written motion To Quash The Subpoena Requiring Its Attorney To Produce Documents is attached hereto as Exhibit "H".

A copy of Petitioner's written motion to require Defendants Dobbs and Russell, and Thomas E. Douglas, Jr., to appear and give their depositions is attached hereto as Exhibit "I".

The order of the Court from which relief is here sought is not a final decision but is an interlocutory decree from which an appeal will not lie.

United States Code Annotated, Title 28, Section 1291; et seq.

Kiefer Mach. Co. v. *U.S. Bottlers*, 108 F. 2d 469, C.C.A. 7th.

Review is here sought from an interlocutory order of the District Court where Petitioner's rights under the Federal Rules of Civil Procedure and the laws and Constitution of the United States have been denied it. The relief sought is predicated upon the authority vested in this Court by Section 1651, Title 28, U.S.C.A., generally referred to as The All Writs Act.

The order, or orders, of which Petitioner complains presents a really extraordinary situation where its right to the equal application of the Federal Rules of Civil Procedure, and its right to equal protection and privileges thereunder are being denied it.

The Supreme Court held in *LaBuy* v. *Howes Leather Company*, 77 S.Ct. 309, 312, 313, 352 U.S. 249, 254, 255, that this Court, in its sound discretion, may issue such extraordinary writs as required to implement its supervisory control over the District Courts.

If Petitioner is required to comply with the orders of the District Court of which it here complains, and await review upon a final decision, it will have been severely injured and irreparably damaged in the interim.

Wherefore, Petitioner prays that the writs of certiorari and supersedeas issue, and that it have such other, further and general relief to which it may be entitled, including a mandamus if so required to effectuate the order of the Court.

THIS IS THE FIRST APPLICATION FOR THE WRITS OF CERTIORARI OR OTHER EXTRAORDINARY PROCESS IN THIS CAUSE.

s/ W. Raymond Denney
W. Raymond Denney
s/ Z. T. Osborn, Jr.
Z. T. Osborn, Jr.
s/ Robert L. Taylor
Robert L. Taylor
s/ William M. Walsh
William M. Walsh
Attorneys for Petitioner

Of Counsel

Denney, Leftwich & Osborn
Nashville, Tennessee
Taylor & Taylor
Memphis, Tennessee
Hanover, Hanover, Hanover & Walsh
Memphis, Tennessee

STATE OF TENNESSEE)
)
COUNTY OF SHELBY)

ROBERT L. TAYLOR, one of the attorneys for Petitioner herein, makes oath that he has read the above and foregoing Petition and that the statements made therein as true, are true; that those made on information and belief he believes to be true; that the allegations relating to the dates of filing of pleadings, the entries of orders and the dates of hearings were abstracted from the official record of this cause in the United States District Court, Western District of Tennessee, Western Division, at Memphis; that the exhibits attached hereto are true and exact copies of the documents on file in said Court; that the above and

foregoing Petition is filed for purposes of preserving and protecting the rights of Petitioner and not for the purposes of delay; that he verily believes Petitioner entitled to the relief which it seeks and that it will suffer severe and irreparable injury unless the equitable and extraordinary relief sought is granted to Petitioner.

s/ Robert L. Taylor
Robert L. Taylor

SWORN TO and subscribed to before me this 13th day of November, 1963.

s/ Philip L. Peeler
Notary Public

My Commission Expires:

16 December 1963

ORDER

THIS CAUSE came on to be heard on the pleadings filed and upon the whole record in this cause, including the following motions which the Court has considered and has made its determination of the issues raised therein:

1. The written motion of Plaintiffs for Discovery and Production of Documents and Things, for Inspection, Copying or Photographing, in the possession of and under the control of Defendants University National Stockholders Protective Committee, Inc., and University National Life Insurance Company.

2. The written motion of Defendant and Cross-Defendant Robert L. Dobbs to require Robert L. Taylor, Lloyd C. Kirkland, Jr., and Robert E. Joyner to show authority to act as attorneys for University National Stockholders Protective Committee, Inc., and to file an answer and cross-claim on its behalf.

3. The written motion of Defendants Barry M. Carter, et al, and their attorney, Robert L. Taylor, to quash the subpoenas issued on September 6, 1963, requiring them to give their depositions on September 16, 1963.

4. The written motion of Defendant and Cross-Defendant Robert L. Dobbs to require *Plaintiffs* (sic) J. R. Tipler, Robert L. Taylor, George A. Davis, Barry M. Carter, Luke Borger, Vernon Goedecke, R. T. Matthews and Carl J. Gates to require said parties to appear on September 16, 1963, to give their depositions.

5. The written motion of Defendants J. R. Tipler, et al, and their attorney, Robert L. Taylor, to expunge, and strike from the record in this cause the motion of Defendant and Cross-Defendant Robert L. Dobbs to require J. R. Tipler, George A. Davis, Barry M. Carter, Luke Borger, Vernon Goedecke, R. T. Matthews, Carl J. Gates and Robert L. Taylor to give their depositions on October 2, 1963, and to set aside and vacate the order of the Court entered September 26, 1963, directing and ordering said parties to give their depositions on October 2, 1963.

6. The written motion of Robert L. Taylor to compensate Defendant and Cross-Defendant Robert L. Dobbs to compensate him as provided by Rule 30(g)(1) of the Federal Rules of Civil Procedure.

7. The written motion of Defendants Barry M. Carter, et al, and Robert L. Taylor, their attorney, to quash the subpoena issued on September 26, 1963, for Robert L. Taylor, and served upon him on September 27, 1963, so far as it requires him to produce for examination "all minute books, minutes of directors and stockholders meetings, minutes of meetings of liquidating agents, stock books, bank account statements, books and/or ledgers of account and financial records of any type whatsoever of University National Stockholders Protective Committee, Inc."

8. The oral motion or application of Defendant and Cross-Defendant Robert L. Dobbs to require Robert L. Taylor to give further testimony by pre-trial depositions before Defendants and Cross-Defendants Robert L. Dobbs and Rudolph V. Russell, and Thomas E. Douglas, Jr., attorney for said Dobbs, are required to give their pre-trial depositions.

9. The oral motion or application of Defendant and Cross-Defendant Robert L. Dobbs to require Robert L. Taylor to produce for examination by said Defendant and Cross-Defendant and his attorney Thomas E. Douglas, Jr., and all other attorneys of record those items or documents as listed in the subpoena duces tecum issued on September 26, 1963, and served upon said Robert L. Taylor on or about September 27, 1963.

10. The written motion of Defendants Barry M. Carter, et al, to require Robert L. Dobbs, Rudolph V. Russell and Thomas E. Douglas, Jr., to appear at the offices of Taylor & Taylor, 208 Adams Avenue, Memphis, Tennessee, at 2:00 o'clock p.m. to give their pre-trial depositions on October 17, 1963.

And the Court having heard and understood the said motions is of the opinion that disposition of the same should be made in the following manner, all of which is so ordered, adjudged and decreed:

1. The written motion of Plaintiffs for Discovery and Production of Documents and Things for Inspection, Copying or Photographing is sustained both as to University National Stockholders Protective Committee, Inc., and University National Life Insurance Company, attorneys for said Defendant corporations having stated in open Court that they did not oppose the same.

The Court being advised by attorneys for Plaintiffs and Defendant University National Life Insurance Company that Plaintiffs have been permitted by said Defendant to inspect all documents and things requested, Defendant University National Life Insurance Company will not be required to provide or make accessible to Plaintiffs any further records by force of this order.

2. The written motion of Defendant and Cross-Defendant Robert L. Dobbs to require Robert L. Taylor, Lloyd C. Kirkland, Jr. and Robert E. Joyner to show authority to act as attorneys for University National Stockholders Protective Committee, Inc., and to file an answer and cross-claim on its behalf is deemed to be well taken so far as it pertains to Robert L. Taylor and he is directed to establish and show his authority to file an answer on behalf of said Defendant and a cross-claim in its behalf as Cross-Plaintiff.

The Court is advised that Lloyd C. Kirkland, Jr., and Robert E. Joyner are no longer associated with Robert L. Taylor in the practice of law and have withdrawn as associate counsel in this case.

3. The written motion of Defendants Barry M. Carter, et al, and their attorney, Robert L. Taylor, to quash the subpoenas issued on September 6, 1963, requiring them to give their depositions on September 16, 1963, has heretofore been overruled but by reason of the failure of the record to reflect that a hearing was had on said motion pursuant to proper notice, and the Court recalling that the action of the Court overruling the same was taken in Mr. Taylor's absence, the Court has given further consideration to the same and reaffirms its action overruling the same for the same reasons set forth in the "Order Requiring Plaintiffs to Give Pre-Trial Depositions" entered in this cause on September 26, 1963.

4. The written motion of Defendant and Cross-Defendant Robert L. Dobbs to require J. R. Tipler, Robert L. Taylor, George A. Davis, Barry M. Carter, Luke Borger, Vernon Goedecke, R. T. Matthews and Carl J. Gates to give their depositions is overruled except so far as it pertains to Robert L. Taylor as hereinafter provided.

5. The written motion of Defendants J. R. Tipler, et al, and their attorney, Robert L. Taylor, to expunge and strike from the record in this cause the motion of Defendant and Cross-Defendant Robert L. Dobbs to require J. R. Tipler, George A. Davis, Barry M. Carter, Luke Borger, Vernon Goedecke, R. T. Matthews, Carl J. Gates, and Robert L. Taylor to give their depositions on October 2, 1963, and to set aside and vacate the Court's order entered September 26, 1963, sustaining said motion, is denied and overruled.

6. The written motion of Robert L. Taylor to require Defendant and Cross-Defendant Robert L. Dobbs to compensate him as provided by Rule 30(g)(1) of the Federal Rules of Civil Procedure is denied and overruled because the Court feels that there was a misunderstanding among the lawyers in this case as to the time and place where the depositions were to be taken and that Mr. Taylor's damage or injury was de minimus.

7. The written motion of Barry M. Carter, et al, and their attorney, Robert L. Taylor, to quash the subpoena issued on September 26, 1963, for said Robert L. Taylor, and served upon him on September 27, 1963, so far as it requires him to produce the minutes and minute books of the directors, liquidating agents and stockholders of University National Stockholders Protective Committee, Inc., its stock books, bank account statements, books and/or ledgers of account and financial records is overruled and the said Robert L. Taylor is ordered and directed to appear in the

offices of Thomas Price, Esq., in the Union Planters Bank Building, 67 Madison Avenue, Memphis, Tennessee, on Monday, October 21, 1963, at 9:30 o'clock a.m. and then and there subject said records to the examination to all of the parties to this litigation and their attorneys of record provided, however, that examination of the witness relating to said records shall be restricted to attorneys of record of Cross-Defendants to the Cross-Claim of University National Stockholders Protective Committee, Inc.

Robert L. Taylor having stated in open Court that there were no formal minutes kept of the meetings of the stockholders, directors of liquidating agents of University National Stockholders Protective Committee, Inc., but that he had maintained notes of the meetings and the outstanding or important events and actions as he recalled them to be, the Court directs him to deliver the same over to the Court for its inspection at some future date not later than October 15, 1963, so that the Court might determine whether said notes or memoranda are privileged and whether they constitute minutes of meetings of stockholders, directors or liquidating agents, or otherwise fall within the description of the material which he has been directed to produce and bring with him for examination by the attorneys of record in this cause.

When the Court has determined the issue relating to Mr. Taylor's notes it will return the same to him in a sealed envelope without exhibiting them or subjecting them to inspection by any of the parties in this cause or their attorneys, or to any one other than those associated directly with his office, and will enter an order to produce the same, or portions thereof, for inspection and examination when his deposition is resumed on October 21, 1963, if the Court determines that the parties to this litigation are entitled to inspect, examine or copy these notes or memo-

randa, otherwise an order will be entered by the Court denying the other parties access to them.

8. The oral motion or application of Defendant and Cross-Defendant Robert L. Dobbs to require Robert L. Taylor to submit himself for further pre-trial examination before Defendants Robert L. Dobbs and Rudolph V. Russell, and Thomas E. Douglas, Jr., are required to give their depositions, is granted and such further examination will be resumed on Monday, October 21, 1963, at 9:30 o'clock a.m. in the office of Thomas Price, Esq., in the Union Planters Bank Building in Memphis, Tennessee, at the conclusion of which Robert L. Dobbs, Rudolph V. Russell and Thomas E. Douglas, Jr., will submit to examination and give oral testimony as provided by the Federal Rules of Civil Procedure.

9. The oral motion or application of Defendant and Cross-Defendant Robert L. Dobbs to require Robert L. Taylor to produce the books and records of University National Stockholders Protective Committee, Inc., as listed in the subpoena duces tecum issued September 26, 1963, and served upon him September 27, 1963, is granted upon the terms and conditions as hereinabove set out.

10. The written motion of Defendants Barry M. Carter, et al, to require Robert L. Dobbs, Rudolph V. Russell and Thomas E. Douglas, Jr., to give their depositions is overruled except as hereinabove set out.

11. The determination of all other issues is at this time reserved until the motions to dismiss filed by various Defendants and Cross-Defendants can be heard and disposition made of the same.

And it appearing to the Court that after the Court had indicated the rulings herein set out, Robert L. Taylor for himself and as attorney for the University National Stock-

holders Protective Committee, Inc. and J. R. Tipler, et al, moved the Court to stay all action pursuant to any such rulings which are adverse to their contentions, pending their application for "certiorari and supersedeas";

And it further appearing to the Court that the other parties hereto had no objection to such a stay pending such application;

It is further ORDERED that all action pursuant to any such rulings herein is stayed for a period of thirty days herefrom to allow such application for appellate review of such rulings, and all such action will further be stayed, if such appellate proceedings are instituted and pending within such thirty day period, so long as such proceedings remain pending.

This the 24 day of October, 1963.

s/ Bailey Brown

(Seal) United States District Judge

COMPLAINT

I.

This action is brought under the provisions of U.S.C.A. Title 28, Section 1332, there being a complete diversity of citizenship between all of the plaintiffs and all of the defendants and the matter in controversy exceeds the sum of $10,000.00 exclusive of interest and costs.

II.

Plaintiffs are all residents and citizens of the State of Mississippi, and are all stockholders in University National Life Insurance Company. All plaintiffs were owners of shares of stock in Security American Life Insurance Company of Tennessee prior to its merger or consolidation with

University National Life Insurance Company of Norman, Oklahoma, on August 16, 1961.

Defendants Luke Borger, George Davis, Carl J. Gates, Vernon Goedecke, W. Frank Jameson, R. T. Matthews, Rudolph V. Russell and James R. Tipler are all citizens and residents of Shelby County, Tennessee, all stockholders of University National Life Insurance Company and are directors of University National Stockholders Protective Committee. The aforesaid defendants hereinafter will be referred to as "Protective Committee Defndants."

Defendants John Costen, Malcolm Deisenroth, Jr., John R. C. Elder, Robert Lee Houser, Milo C. Morgan and Albert M. Scruggs were all members of and constituted the Board of Directors of University National Life Insurance Company immediately prior to the annual meeting of the stockholders of said company on March 28, 1963.

John Costen, John R. C. Elder, Milo C. Morgan and Albert M. Scruggs are all residents of Shelby County, Tennessee. Malcolm Deisenroth, Jr., is a resident of Tulsa, Oklahoma. Milo C. Morgan was president of the company; Albert M. Scruggs and John R. C. Elder were vice-presidents. John Costen was secretary. Robert Lee Houser is a resident of Hugo County, Oklahoma. These defendants will hereinafter be referred to collectively as "former company officers and director defendants."

Defendant Cletis E. Manning is a former member of the Board of Directors, who resigned in December, 1962, and is a citizen and resident of Shelby County, Tennessee.

Defendants Barry M. Carter, Malcolm Deisenroth, Jr., Robert L. Dobbs, John R. C. Elder, Robert Lee Houser, Sidney E. Leiwant, Milo C. Morgan, Rudolph V. Russell, Albert M. Scruggs and James R. Tipler allege themselves to constitute the present Board of Directors. Milo C.

Morgan claims the title of president, Malcolm Deisenroth, Jr., claims the title of chairman of the Board, and Robert L. Dobbs claims the title of secretary. As aforesaid, defendants Carter, Dobbs, Morgan, Russell, Scruggs and Tipler are all residents of Shelby County, Tennessee, and defendants Deisenroth and Houser are residents of the State of Oklahoma. Defendant Leiwant is a resident of South Orange, New Jersey, with offices in Newark, New Jersey. These defendants will hereinafter be referred to as "pretending director defendants."

Immediately prior to the last election on March 28, 1963, defendants Costen, Elder and Morgan were members of and constituted the executive committee of University National Life Insurance Company. When referred to collectively they will be referred to as "former executive committee defendants."

Defendants Deisenroth, Dobbs and Morgan represent themselves to be the present members of the company executive committee. If referred to hereafter collectively, they will be designated as "pretending executive committee defendants."

Defendant Marshall B. Scott is a resident of Shelby County, Tennessee, and sometime prior to March 28, 1963, he was the president, chairman of the board, treasurer, director and member of the executive committee of the University National Life Insurance Company.

Defendant University National Life Insurance Company is a corporation, organized and existing under the laws of the State of Tennessee, with its principal place of business at 60 North Third Street, Memphis, Tennessee. It will hereafter be referred to as "defendant Life Insurance Company."

Defendant University Stockholders Protective Committee, Inc., is believed to be a corporation organized and existing under the laws of the State of Tennessee, with its principal place of business at 208 Adams Avenue, Memphis, Tennessee. It will hereafter be referred to as "defendant Protective Committee."

Defendant Walter C. Green is a non-resident of the State of Tennessee and a resident of the State of Utah, residing in Salt Lake City. His office address is Suite 400, 455 East Fourth South, Salt Lake City, Utah.

Defendant Administrators, Inc., is a corporation organized and existing under the laws of the State of Utah, with its principal place of business at Suite 400, 455 East Fourth South, Salt Lake City, Utah. It has not qualified to engage in business in Tennessee, although it has done extensive business in this state.

Defendant Albert Williams is a citizen and resident of Davidson County, Tennessee, and is the duly appointed and qualified Commissioner of Insurance and Banking in the State of Tennessee. He is sued only in his official capacity as Commissioner of Insurance and Banking in the State of Tennessee and is a nominal defendant in character, against whom no monetary or extraordinary relief is sought. A portion of the relief sought herein is subject to his being a party defendant, and a portion is maintainable only where he is a party defendant or the complaining party.

IV.

Defendant Life Insurance Company was originally organized as a Tennessee corporation under the name of American Security Life Insurance Company, but changed its name before commencing business to Security American Life Insurance Company of Tennessee. It was first licensed by the Department of Insurance and Banking of

Tennessee in December of 1957. It had at that time sold 447,967 shares of common stock of the par value of One ($1.00) Dollar per share, said stock being sold at Five ($5.00) Dollars per share. A fifteen (15) per cent sales commission was allowed its promoters, leaving $447,967.00 as capital and $1,455,251.00 as contributed unassigned surplus.

During the calendar year 1958 the Company sold 398,419 shares at Five ($5.00) Dollars per share, producing $398,419.00 in additional capital, and $1,279,264.00 in additional surplus.

During the calendar year 1959 the Company sold 5,418 shares at Five ($5.00) Dollars per share, producing $5,418.00 in additional capital and $21,672.00 in additional surplus.

V.

Complainants are informed that defendant Life Insurance Company issued ordinary life insurance policies in the calendar year 1958 aggregating $10,424,571.00 and suffered a decrease in surplus of $79,296.00, resulting in an acquisition cost of new ordinary life business of less than Eight ($8.00) Dollars per thousand. This is believed to be a most favorable operation, as the actuaries consider anything less than Forty ($40.00) Dollars per thousand of ordinary life as favorable and profitable.

Defendant Life Insurance Company's statement for 1959 reflects that it issued ordinary policies aggregating $6,143,990.00 and suffered a further depletion or reduction of surplus of $133,693.00. Plaintiffs are informed that the acquisition cost was still within acceptable limits actuarily, less than Twenty ($20.00) Dollars per thousand.

In 1960 defendant Life Insurance Company suffered a further surplus depletion of $112,201.00 and issued ordinary

insurance totalling $3,663,025.00. Plaintiffs are advised that this represents an average cost of less than Forty ($40.00) Dollars per thousand.

VI.

Plaintiffs are informed that in 1960 the stockholders became apprehensive of the rising costs of insurance sold, and that a number of them banded together under the name of the Stockholders Protective Association. At the annual meeting of the stockholders in March 1961, there was much criticism of management and the former executive committee defendants were charged with mismanagement and incompetency.

Plaintiffs are advised that at the annual meeting of the stockholders in March 1961, the Board of Directors determined that there were four practical approaches to the solution of its problems, to-wit:

1. The acquisition of other insurance companies in financial distress.

2. The sale of group life insurance which, while it produced a very small profit and had little value, made the company's statement look good and satisfied the complaints of the stockholders.

3. The payment of higher first year commission to agents than paid by other companies.

4. The writing of substandard business.

Plaintiffs are informed that the former officer and director defendants agreed to follow all four courses and that shortly thereafter they were approached by a man named Crenshaw from Texas, who told them of the University National Life Insurance Company of Norman, Oklahoma. Defendant Walter C. Green, the Company's actuary was sent to examine its affairs and reported it to

be in good financial condition. Representatives of the two companies met and agreed to a formula for merging or consolidating, subject to approval of their respecive directors and stockholders. The agreement provided that the consolidated company would be called University National Life Insurance Company, and that its home office would be in Memphis, Tennessee. Defendants Scott, Elder, Costen, Manning, Scruggs and Leiwant were to remain on the Board of Directors of the consolidated company along with Wayne, Wallace and Clifford Thomas of the Oklahoma company. Wallace was to become chairman of the new board and Scott was to become president; Elder and Scruggs, vice-president, and Costen, secretary.

VII.

Plaintiffs are informed that the former executive committee defendants, with the approval, consent and authority of the Board of Directors of Security American Life Insurance Company, along with the company actuary, defendant Walter C. Green, investigated the affairs of the Oklahoma company and found it to be insolvent and also determined that it had greatly inflated the value of its assets as contained in its financial statement. These defendants' plans were so well formed, however, and their desire to acquire the business of the Oklahoma company was so intense that they determined to effect the merger with that company at any cost, and despite knowledge of the aforesaid facts.

Plaintiffs are advised the former executive committee defendants, with the support of defendant Green, proposed to their Board of Directors that the merger or consolidation be effected by swapping stock with those owning stock in the Oklahoma company, giving them nine shares of stock in the Tennessee company for each twenty-two shares of stocks which they owned in the Oklahoma company.

Plaintiffs are advised that the Oklahoma stock was originally issued at par value of One ($1.00) Dollar each, but that it had since been split five for one, giving it a par value of twenty cents ($0.20) per share. However, according to information which plaintiffs consider to be reliable, the surplus of the Oklahoma company had been exhausted and the capital impaired to an extent of nearly fifty (50) per cent. At least $111,000.00 of the $250,000.00 capital had been spent, resulting in a book value of less than ten cents ($0.10) per share.

Plaintiffs are informed that defendants Scott, Costen, Elder and Green concealed the true condition of the Oklahoma company from the other directors and represented to them that the trade was an advantageous one for the stockholders, from which all would profit. Plaintiffs are advised that said Board of Directors relied upon these representations and on the basis of same voted unanimously to effect the merger with the Oklahoma company and voted to submit the plan to the stockholders with their approval.

VIII.

Plaintiffs are advised that under the laws of the State of Tennessee a merger or consolidation of two insurance companies cannot be effected without first obtaining the approval of the Commissioner of Insurance and Banking of Tennessee and a majority of the stockholders as set out in T.C.A. 48-501, et seq.

Plaintiffs are advised that the former executive committee defendants conferred with the Commissioner of Insurance and Banking of Tennessee, at that time Honorable John R. Long, and discussed with him the proposed merger. Commissioner Long took the matter under advisement and submitted the plan to his staff for examination. Plaintiffs are informed that Mr. Long advised

said defendants that his staff employees did not consider the merger in the best interest of the Tennessee company and its stockholders, and recommended that the plan be abandoned. According to plaintiffs' information, said defendants took with them, on their second conference with Mr. Long, defendant Walter C. Green, the company consulting actuary. They are said to have been adamant about it, to have exercised political pressure and insisted they desired to go forward with the proposed merger. The Commissioner is reported to have said that he was not inclined to assume the duties of company management, but that he did want to meet the entire Board of Directors and tell them the dangers of the plan. An appointment was made with him for such a meeting.

IX

At the appointed hour, however, according to information obtained by these plaintiffs under oath, defendants Scott, Costen, Green and the company attorney appeared and explained that it was not possible to bring all of the directors at any given time because of their other business activities, but that the company attorney and actuary had discussed with the full Board all of the Commissioner's objections to the merger; that the Board did not feel the Commissioner's objections were well taken and had voted unanimously in favor of proceeding despite his objections.

Plaintiffs are informed that Commissioner Long again voiced objection to the proposed merger and again told them that he was not going to interpose himself upon the management of the company, if that was the decision of the Board of Directors. He reluctantly gave his approval.

X.

Plaintiffs are informed that defendants Scott, Costen, companies' were misled by misrepresentation of those

seeking to effect the merger, but voted for the same upon the recommendations of their respective Board of Directors and their representation that the plan had the enthusiastic approval of the Commissioner of Insurance and Banking of the states of Tennessee and Oklahoma.

XI.

On August 16, 1961, Security American Life Insurance Company and University National Life Insurance Company were merged or consolidated and thereafter has been known as University National Life Insurance Company, plaintiffs being advised that all the assets of the Oklahoma company were transferred to the Tennessee company; that the Tennessee company changed its name to University National Life Insurance Company and assumed all of the liabilities of the Oklahoma company. The charter of the Oklahoma company was apparently surrendered and the corporation dissolved.

XII.

Plaintiffs aver that the defendants Scott, Costen and Green misrepresented the condition of the Oklahoma company to the directors and stockholders of the Tennessee company and obtained the approval of the merger by the Commissioner of Insurance and Banking and the stockholders by fraud and deceit. They are advised that though the Board of Directors were not, at that time, advised of the objections of the Commissioner of Insurance and Banking, their approval of the plan constituted gross negligence in failing to fully investigate and examine the scheme, as they were required to do as the directors of the company. Plaintiffs are also informed that the Board of Directors subsequently learned of their error and negligence in adopting and effecting the merger plan, but no attempt was made to discharge those who practiced the deception on

them, but instead continued them in office for more than eighteen (18) months thereafter, during which time it is believed that more than two million dollars was wasted and squandered.

XIII.

After the former officer and director defendants learned of the deception practiced upon the stockholders they not only retained in office those responsible for the same, but permitted them to further deceive the stockholders and the Commissioners of Insurance of the states in which they were licensed to do business by publishing and circulating financial statements, letters and advertisements designed to lead them to believe that the company was improving its financial position and increasing its insurance in force when, as a matter of fact, the company was losing money from its operations in ever increasing proportions and was losing the ordinary insurance business rather than enjoying a gain, as advertised.

The two companies combined had a surplus of $2,748,983.00 as of January 1, 1961. By December 31, 1961, this surplus had dwindled to $1,592,426.00 and by December 31, 1962, to $835,000.00, although the statements published and circulated by the company presented an entirely different picture. In the same period plaintiffs are advised that its ordinary whole life and endowment insurance in force had decreased from $53,850,683.00 to $42,973,816.00, a loss of $10,876,867.00, ordinary whole life and endowment business.

The former officer and director defendants filed or caused to be filed with the Commissioners of Insurance of the states in which the defendant Life Insurance Company was qualified to do business a statement of its operations for the year ending December 31, 1961. This statement

reflects that the company had spent $60,010.65 for travel, when in fact it had spent more than $80,000.00; $8,689.85 for legal fees, when in fact they exceeded $30,000.00; $30,670.69 for actuaries and accountants, when in fact they exceeded $61,000.00.

On or about October 12, 1962, the former officer and director defendants mailed to the stockholders of the company a summary of operations, claiming on the one hand an improved financial position, and on the other hand admitting a net loss from operations of $186,939.02 for the first eight (8) months of the year 1962. The summary disclosed that practically all of this loss was sustained in the first five (5) months of the year and represented that expenses had been so materially reduced that a profit was anticipated for the balance of the year. The fact is that these defendants had published and delivered to the Commissioner of Insurance and Banking of Tennessee a statement dated September 25, 1962, more than two weeks before same was submitted to the stockholders on October 12, 1962, reflecting a further loss of $37,236.00 between August 25, 1962, and September 25, 1962, a loss of far greater proportions than as claimed for the first eight (8) months. Plaintiffs are also advised that the actual loss from operations for the first nine (9) months was more than $362,000.00 rather than $224,175.02.

These same defendants filed or caused to be filed with the Commissioners of Insurance of the states in which the Company is licensed to do business a statement of the Company operations for the year ending December 31, 1962. This statement, made under oath, declared that the Company had in force ordinary life policies (including term insurance) aggregating $70,512,776.00 when, as a matter of fact, it had only $60,556,367.00. It declared the Company to have an unassigned surplus of $946,845.16

when, according to plaintiffs' information, its surplus was slightly more than $835,000.00.

Plaintiffs are advised that as a result of these false statements distributed by these defendants the United States Postal Inspector and the Securities Exchange Commission are making an investigation of the Company and its operations.

XIV.

The operating expenses of defendant Life Insurance Company exceeded its premium income by more than fifteen (15) per cent for the calendar year of 1961. This was attributed by those in charge of the affairs of the Company to the cost of consolidation and other non-recurring expenses. However, the statement filed with the Commissioner of Insurance and Banking for the calendar year 1962 shows the operating expenses had been increased to such an extent that it exceeded premium income for that period by more than twenty-five (25) per cent. Plaintiffs are informed that said operating expenses for the year 1962, actually exceeded premium income by more than thirty (30) per cent. Plaintiffs are informed that the Home Office expense as compared to premium income is more than three (3) times that of the average of other companies. They are likewise informed that fees for lawyers, accountants and actuaries are equally out of proportion.

XV.

Plaintiffs are informed that defendant Scott was arrested early in the morning of April 25, 1962, in the rear seat of an automobile, parked in a liquor store parking lot, on a morals charge by the Vice-Squad of the Memphis Police Department. Plaintiffs are advised Scott and a

companion were charged with having unnatural sex relations and that each of them forfeited $153.00 on May 2, 1962, when they failed to appear in Memphis City Court. Plaintiffs aver that the former officer and director defendants were advised of their president's delinquency and misconduct and they were requested by a group of stockholders to remove him, but they refused to do so and retained him in office as President, Chairman of the Board, Director, Member of the Executive Committee and Treasurer until March 1963.

The natural result of retaining this president in office, after it had become general knowledge among the employees and the citizens of this community was the adverse and destructive affect on employee morale and public acceptability of the Company.

XVI.

Plaintiffs aver that the decay and decline of the Company's condition is due to the fraud, waste, mismanagement, incompetency, gross negligence, misconduct and misappropriation of funds.

XVII.

Defendant John R. C. Elder, in addition to being Vice-President of defendant Life Insurance Company, was also Vice-President of Marx & Bensdorf, a local mortgage banking house. While occupying the vice-presidency of both companies, Marx & Bensdorf sold to defendant Life Insurance Company promissory notes secured by deeds of trust on real estate for a price in excess of $500,000.00. Through the efforts of defendant Elder it also sold as agent the present Company home office, 60 North Third Street, Memphis, Tennessee.

Plaintiffs are informed and believe that the notes purchased from Marx & Bensdorf have a market value much less than face value and much less than the value listed by defendant Life Insurance Company in its investment portfolio. Plaintiffs are also informed that Marx & Bensdorf and defendant Elder profited from the sale of these notes and real estate and were unjustly enriched thereby.

XVIII.

A group of stockholders banded together in the fall or late Summer of 1962, under the name of University National Stockholders Protective Committee, obtained a charter from the State of Tennessee under that name and its directors brought a derivative lawsuit for the benefit of all stockholders against the defendant Life Insurance Company and the former officer and director defendants seeking a recovery of funds wasted and squandered. This action compounded the injury and damage to the Company. However, once the damage has been done, after they had brought those in charge of the Company to their knees, they entered into an alliance with those whom they had accused of all types of high crime and misconduct and dismissed their lawsuit without obtaining permission of or giving notice to the other stockholders for whose benefit it was claimed the suit was brought.

Plaintiffs charge that this alliance or agreement of March 27, 1963, dismissing the lawsuit was for the benefit of a certain few of the defendants and not for the benefit of the stockholders. Plaintiffs are advised that such agreement is unlawful.

The Protective Committee defendants named five (5) of the members of the Protective Committee to the Company Board of Directors. Plaintiffs are informed that they

began and are now collaborating with the old board and continuing the policies which they had condemned by appeal to the other shareholders in the proxy campaign as hereinabove related. The present Board has voted each member a fee of $100.00 for each monthly meeting.

Plaintiffs are advised that the present Board of Directors are violating the Company By-laws and the laws of the State of Tennessee in the holding of their meetings and in the operation of the Company affairs.

Section 3.06 of said By-laws provide that each newly elected Board of Directors shall meet immediately following the annual meeting of the stockholders at the same place. The annual meeting of the stockholders for 1963 was held on March 28 and 29, 1963, at the King Cotten Hotel. Without the consent of all the directors, the meeting of the new Board was held at the office of the Company at 60 North Third Street. Two of the directors were not in attendance and another duly elected director was persuaded and coerced to leave by the false representation that it had been agreed by attorneys for the Company and the Protective Committee that he was supposed to do so. Plaintiffs claim that meeting was not lawfully held and all of its proceedings are invalid. The Board of Directors met again on April 19, 1963, but notice of the meeting was not given to all the directors and one of them was instructed not to attend this meeting. At this meeting defendant Leiwant was elected a director. Plaintiffs claim this meeting was not lawfully convened and its proceedings are invalid.

The Board of Directors met again on May 17, 1963. Prior to this meeting defendants Elder and Costen had resigned as directors of the Company. Without submitting the matter to the action of the Board, the President and the Chairman of the Board returned their resignations and

permitted them to participate in and vote on matters coming before the directors. Defendant Leiwant, not having been legally elected, was also permitted to vote and participate in the meeting as if he were a member.

The Board met again on June 28, 1963, and again defendants Elder, Costen and Leiwant were permitted to participate and vote as if Directors.

XIX.

Plaintiffs are advised that the Directors are secretly planning to sell off the Company assets or merge it with another company; that one or more of the Directors have secret agreements with other insurance companies providing for a finder's fee for them if a sale or a merger can be affected.

Plaintiffs aver that the Directors are unable to cope with the problems confronting them and know little if nothing about the operation of an insurance company. Defendant Morgan was elected President at $25,000.00 per year salary without any investigation of his background being made. It is believed that he was unemployed at the time. Plaintiffs are informed that he was at one time president of a life insurance company in Denver, Colorado, for four (4) years, during which time he was able to increase the ordinary life business on the books by only $800,000.00. Plaintiffs are informed that the company suffered a depletion of surplus during that period of more than $560,000.00, an estimated cost of more than $700.00 per $1,000.00 of increase in insurance. This cost is prohibitive, as the company will pay the death benefit of $1,000.00 and costs of servicing and second year commissions estimated to be at least $100.00 per thousand. This totals approximately $1,800.00 as the cost per thousand. In return, it can expect to collect between $600.00

and $650.00 per thousand average, and that over a period of years.

XX.

Plaintiffs are advised that the former officer and director defendants authorized and approved the payment of $150,000.00 to Wayne C. Wallace and Clifford Thomas for the purchase of 40,000 shares of stock in the Oklahoma Company prior to the merger. This represents a price of $3.75 per share, when it is believed that the stock had a book value of ten cents ($0.10) per share; that they authorized and paid defendant Walter C. Green more than $35,000.00, when a reasonable fee would have been closer to $10,000.00; that they authorized and approved payment to defendant Administrators, Inc., the sum of $26,307.83, when a fee of $3,000.00 would closer approximate a reasonable fee for services rendered; that said defendants authorized the diversion of $261,363.64 from the surplus of the Tennessee company to the Oklahoma company prior to the merger without approval of the stockholders; and that as a result of either their complicity and conspiracy in the scheme or plan, or their gross negligence, they have caused, aided and abetted in the dissipation of more than $2,000,000.00 of the Company's funds and assets since January 1, 1961, the original surplus of $3.25 per share of stock having been now reduced to less than sixty-five cents ($0.65) per share.

XXI.

Plaintiffs are advised that all of the individual defendants are jointly and severally liable for the injuries and

damages sustained by defendant Life Insurance Company, and that the plaintiffs are entitled to have and recover a judgment against all the defendants for such injuries and damages and for all their expenses in prosecuting this action.

XXII.

Plaintiffs have made written demand upon each of the pretending director defendants and upon defendant Life Insurance Company to bring a suit against those responsible for the dissipation of the Company's funds by waste and mismanagement and have made demand on the defendant Protective Committee Board of Directors to reinstate their derivative suit in Chancery Court, all of which has been refused.

WHEREFORE, PLAINTIFFS PRAY:

1. That plaintiffs have and recover of each defendant herein, or those of them whom the Court determines responsible and liable, a judgment equal to the amounts wasted, squandered, misappropriated, diverted, procured and/or spent under false pretenses, or otherwise dissipated as a result of fraud, gross negligence, incompetency or indifference, all for the benefit of all stockholders and in favor of University National Life Insurance Company.

2. That plaintiffs have and recover of each defendant herein a judgment for all expenses to which they have been and are put in instituting and pressing this litigation, including but not limited to, their attorneys' fees, audit expenses, actuary fees, court reporter expenses, stenographic assistance, photo-reproduction expenses and court costs.

3. That plaintiffs have such other, further and general relief to which the Court may deem them entitled under the facts.

PEARSON, SABELLA AND O'BRIEN
By: s/ Anthony J. Sabella
Anthony J. Sabella
s/ Charles H. O'Brien
Charles H. O'Brien
Attorneys for Plaintiffs
1401 Columbian Mutual Tower
Memphis 3, Tennessee

AMENDMENT TO COMPLAINT

Pursuant to Rule 15(a) of the Federal Rules of Civil Procedure, plaintiffs in the above styled cause amend their complaint as follows:

I.

To add as Paragraph XXIII the following allegations antecedent to the prayer of the complaint.

They are advised that the directors of University National Life Insurance Company have voted to merge with the South Coast Life Insurance Company of Houston, Texas, and are preparing to call a special meeting of the stockholders urging them to agree and consent to such merger.

They are advised that the merger could have been effected without the payment of a finder's fee and that contact was made between the two companies without the aid or assistance of a finder or broker, but that subsequent to this contact between the two companies one of the directors of University National Life Insurance Company

telephoned one Ray Terry at Portland, Oregon, requesting that he contact South Coast Life Insurance Company and obtain a finder's fee contract.

They are further advised that said Terry contacted the officials of South Coast Life Insurance Company by telephone and obtained a finder's fee or brokerage agreement, and that in addition to his fee, one or more directors of one or both of the companies is to receive an under-the-table payment in violation of his or their position of trust and the laws of the States of Tennessee and Texas.

II.

To add as Paragraph XXIV the following allegations:

South Coast Life Insurance Company is believed to operate in only one state of the fifty, Texas, and to be licensed in only two states of the fifty, Texas and Arizona.

University National is believed to be licensed in twenty-four states and plaintiffs are informed that more than ninety-seven per cent (97%) of its policyholders reside in the twenty-two states in which South Coast is not admitted to do an insurance business.

Plaintiffs are informed that the merger will not carry with it the licenses held by University National Life Insurance Company, but that to the contrary these licenses will be cancelled, thereby forfeiting the many thousands of dollars it has spent in building an agency organization, expenses of admittance and a large part of the price paid for the merger with the Oklahoma company.

III.

To add as Paragraph XXV the following allegations:

Plaintiffs are advised that the South Coast Life Insurance Company, after merger, proposes to abandon the

solicitation of business in the twenty-two states in which it is not admitted and that the natural result and consequence will be the loss of the insurance business in force in those states.

Plaintiffs are further advised that South Coast Life Insurance Company can not legally continue to send notices of premiums due and receive premiums from persons residing in states other than those in which they are licensed to do business, that the plan it proposes to follow is violative of the laws of the states in which it proposes to do a mail order business and the law of the United States, and that the natural result and consequence will be a multiplicity of lawsuits and a further depletion of its assets.

They are also advised that South Coast Life Insurance Company's capital stock structure is such as to prevent it from being admitted to do business in most of the states where the policyholders of University National Life Insurance Company reside.

IV.

To add as Paragraph XXVI the following allegations:

Plaintiffs are advised that the meeting of the directors at which the plan of merger was approved was not legally assembled in that three of those voting upon and approving the plan were not legally elected members of the board of directors and that the officers calling the meeting were not legally elected to the offices which they claim.

Plaintiffs therefore allege that the action of the board in approving the plan of merger was unlawful and that the proposed plan can not be lawfully submitted to the

stockholders of University National Life Insurance Company and can not be lawfully adopted by them.

s/ Anthony J. Sabella
Anthony J. Sabella
Attorney for Plaintiffs
1401 Columbian Mutual Tower
Memphis 3, Tennessee

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing amendment to complaint was served on the following by depositing in the United States mail, postage prepaid, on August 8, 1963:

1. Robert L. Taylor, 208 Adams Avenue, attorney for defendants Carter, Borger, Davis, Gates, Goedecke, Jameson, Matthews, Tipler and Protective Committee.
2. John M. Heiskell, Commerce Title Building, Memphis, Tennessee, attorney for defendant Life Insurance Company.
3. Thomas R. Price, Union Planters Bank Building, Memphis, Tennessee, attorney for defendant Scott.
4. Rudolph V. Russell, 1015 N. Graham, Memphis, Tenn.
5. John Costen, Sterick Bldg., Memphis, Tennessee.
6. Malcolm Deisenroth, Jr., World Bldg., Tulsa, Oklahoma.
7. Robert L. Dobbs, Exchange Building, Memphis, Tenn.
8. John R. C. Elder, Home Federal Bldg., Memphis, Tenn.
9. Sidney E. Leiwant, 10 Commerce Court, Newark, N.J.
10. Cletis E. Manning, 4344 Tutwiler Ave., Memphis, Tenn.
11. Milo C. Morgan, 60 N. 3rd St., Memphis, Tenn.

12. Albert M. Scruggs, 58 Flicker St., Memphis, Tenn.
13. Robert Lee Houser, Hugo, Oklahoma.
14. Administrators, Inc., 455 East Fourth St., Salt Lake City, Utah.

s/ Anthony J. Sabella
Anthony J. Sabella

SECOND AMENDMENT TO COMPLAINT

Pursuant to leave of the Court, plaintiffs in the above-styled cause amend their Complaint as follows:

I.

To add as Paragraph XXVI:

The following named plaintiffs were shareholders at the time of the transactions, of which they complain, occurred: N. E. Dacus, Hayden K. Criswell, Irene J. Criswell, James M. Simmons, Jessie L. Simmons, Mabel D. Lofton, J. T. Street, Jr., Bobbie S. Street, Falba Simmons. The other shareholders became shareholders subsequent to the occurrence of the transactions of which they complain.

The action is not a collusive one to confer on this Court jurisdiction. The residencies of the plaintiffs are as alleged in the Complaint and the amount in controversy has not been exaggerated so as to confer jurisdiction on this Court.

The allegations in the Complaint, as well as those in the Amendment to the Complaint, are based in part on information contained in prior lawsuits filed in a State court, certified public accountant's reports, proxy solicitation letters and affidavits and exhibits filed in the State court actions.

On or about July 1, 1963, plaintiffs wrote letters to the University National Life Insurance Company and to each

of its directors, calling upon them to bring suit for the loss of money and insurance in force resulting from waste and mismanagement of its former officers and directors. Similar type letters were written to the individual defendants and the directors of the University National Stockholders Protective Committee. A reply was received from the Secretary of the Protective Committee.

At the request of attorney for the defendant University National Life, who upon information and belief, was acting on behalf of defendant Insurance Company, as well as its directors, except defendants Carter and Tipler, a meeting was held in the office of the attorney for the defendant Protective Committee on July 9, 1963. There was a complete review and discussion with the attorney for the Protective Committee and the attorney for the defendant Insurance Company of the complaints against the management of the Company. The attorney for the defendant Protective Committee stated that he was unwilling to attempt to reinstate the State court action which they had dismissed. Attorney for defendant Insurance Company asked plaintiffs to write him a letter setting out the matters of which they were complaining and about which they had conferred. Such a letter was sent, however, no reply to this last request was received; and, accordingly, the Complaint was filed on July 18, 1963. Upon information and belief, plaintiffs were convinced from the beginning that it was a useless gesture to request the directors to bring suit for the damages inflicted on the defendant Insurance Company, because they had been requested to do so by the complainants in the State court action, and according to the Bill had failed and refused to do so. The conference described above, held on July 9, 1963, confirmed the initial belief that it was and would

be a useless gesture to request the directors to bring suit for damages, as they had been requested.

Anthony J. Sabella
Attorney for Plaintiffs

STATE OF TENNESSEE)
COUNTY OF SHELBY)

Anthony J. Sabella, after being duly sworn, deposes and says, that he is one of the attorneys for the plaintiffs herein and that the facts in the Complaint and in the Amendments to the Complaint are true to the best of his knowledge and belief, except for those made on information and belief, and those he believes to be true.

s/ Anthony J. Sabella
Anthony J. Sabella

Subscribed and sworn to before me this 26th day of September, 1963.

s/ R. L. Pearson
Notary Public

My Commission expires:

August 29, 1965.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Amendment to the Complaint was served on the following by depositing in the United States mail, postage prepaid, on September 26, 1963.

Robert L. Taylor, Esq.
208 Adams Avenue
Memphis, Tennessee

Thomas R. Price, Esq.
Union Planters Nat'l
Bank Building
Memphis, Tennessee

Robert L. Dobbs, Esq.
Exchange Building
Memphis, Tennessee

John M. Heiskell, Esq.
Commerce Title Building
Memphis, Tennessee

Tom Douglas, Esq.
Exchange Building
Memphis, Tennessee

s/ Anthony J. Sabella
Anthony J. Sabella

ANSWER AND CROSS-CLAIM OF DEFENDANT UNIVERSITY NATIONAL STOCKHOLDERS PROTECTIVE COMMITTEE, INC.

Defendant University National Stockholders Protective Committee, Inc., for answer to the complaint of Plaintiffs in the above styled cause, says:

I

It is advised that there is a complete diversity of citizenship except as to Plaintiff Falba Simmons whose residence is not known to this Defendant.

II

It is advised that Plaintiffs are all residents of the State of Mississippi with the exception of Falba Simmons whose residence is unknown to this Defendant.

It is advised that all of the Plaintiffs were at one time stockholders of University National Life Insurance Company but it is not sufficiently informed to either admit or

deny the allegation as made with reference to their ownership of stock in Defendant University National Life Insurance Company.

It is not informed as to whether the Plaintiffs were or were not stockholders of Security American Life Insurance Company of Tennessee prior to its merger or consolidation with University National Life Insurance Company of Norman, Oklahoma. If the stockholders list as copied from the records of the company in 1962 reflects whether the persons then owning stock in the company had been stockholders of either company prior to merger, this Defendant was unable to make such a determination from the records made available to it.

It admits that Defendants Luke Borger, George Davis, Carl J. Gates, Vernon Goedecke, W. Frank Jameson, R. T. Matthews, Rudolph V. Russell and James R. Tipler are all citizens and residents of Shelby County, Tennessee. and at one time were all stockholders of University National Life Insurance Company and are directors of University National Stockholders Protective Committee Inc. It is advised, however, that Defendant George Davis has now sold all of his stock in the Defendant life insurance company. It would show to the Court that the above named Defendants do not constitute the entire board of directors of the Protective Committee but were eight members of the board who brought a similar suit to that of Plaintiffs herein in the Chancery Court of Shelby County, Tennessee.

It admits that Defendants John Costen, Malcolm Deisenroth, Jr., John R. C. Elder, Robert Lee Houser, Milo C. Morgan and Albert M. Scruggs constituted the board of directors of Defendant insurance company immediately prior to the annual meeting of the stockholders on March 28, 1963.

It admits that Defendants Costen, Morgan, Elder and Scruggs are residents of Shelby County, Tennessee, and that Defendant Deisenroth is a resident of Tulsa, Oklahoma. It is advised that Defendant Morgan alleges himself to be president of University National Life Insurance Company but is unable to say that he was duly elected to such office either before or since the annual meeting of the stockholders on March 28, 1963. It is advised that Defendants Scruggs and Elder held themselves out to be vice-presidents of the company prior to March 28, 1963, and that Defendant Costen is alleged to have been its secretary. It is admitted that each drew a salary as such officers but it has reason to doubt the validity of their election either as directors or officers.

It is advised that Robert Lee Houser is a resident of Hugo, Oklahoma, but cannot verify the same. It is advised that there is no such county in Oklahoma as "Hugo County" but that the town of Hugo is located in and is the county seat of Choctaw County, Oklahoma.

It is advised that Defendant Cletis E. Manning is an alleged former member of the board of directors of University National Life Insurance Company but is unable to admit or deny the validity of his election. It admits that he is a resident of Shelby County, Tennessee, and is informed that he resides at 4344 Tutwiler Avenue in Memphis, but has not ascertained that he claims himself to be a citizen of Shelby County. It presumes he is a citizen of Shelby County but is unable to admit or deny the same.

It admits that Defendants Barry M. Carter, Malcolm Deisenroth, Jr., Robert L. Dobbs, John R. C. Elder, Robert Lee Houser, Sidney E. Leiwant, Milo C. Morgan, Rudolph V. Russell, Albert M. Scruggs and James R. Tipler allege themselves to constitute the present board of directors of

University National Life Insurance Company. It is advised that Barry M. Carter, Malcolm Deisenroth, Jr., Robert L. Dobbs, Robert Lee Houser, Rudolph V. Russell, Albert M. Scruggs and James R. Tipler were duly and legally elected but it is informed that John R. C. Elder has resigned from the board but has been permitted to attend the directors' meetings and vote and otherwise participate therein. It is further advised that said John R. C. Elder has been paid a stipend of $100.00 per month as a director even though he is not a member of said board, and that he has accepted the same knowing that he was not entitled thereto.

It is advised that the validity and legality of the election of Milo C. Morgan and Sidney E. Leiwant is questionable.

It is advised that there is serious question as to the legality of the election of those Defendants claiming to be officers of Defendant life insurance company and its executive committee. It, therefore, questions the legality of the election of all other officers. It is advised that one of the vice-presidents, one James O. Green, was *"appointed"* by the alleged president, Defendant Milo C. Morgan, and was not elected by the board of directors as required by the by-laws of the company.

It admits the residence of Defendant Leiwant as alleged.

It is advised that immediately prior to March 28, 1963, Defendants Costen, Elder and Morgan claimed to have been elected to the executive committee and is advised that they were in charge of the affairs of University National Life Insurance Company and dominated its operation in the de facto capacity of its executive committee. It is advised that their election to such executive committee is questionable.

It is advised that Defendants Deisenroth, Dobbs and Morgan represent themselves to be present members of the executive committee, and it is further advised that Defendant Rudolph V. Russell claims to be a member of that committee. This Defendant is unable to admit or deny that any one or all of them were duly and legally elected to said executive committee and reserves grave doubts of the same.

It is advised that Defendant Marshall P. Scott is a former president, chairman of the board, treasurer, director and member of the executive committee of University National Life Insurance Company but questions his election to these offices after March of *1962*, Defendant having some reservations as to the legality of the election of the directors at the annual meeting of the stockholders at that time.

It admits the corporate existence of Defendants University National Life Insurance Company and University National Stockholders Protective Committee as alleged.

It admits the residence of Defendant Walter C. Green.

It admits the corporate existence of Defendant Administrators, Inc.; and admits that it was organized under the laws of the State of Utah and has its principal place of business in Salt Lake City, Utah, as alleged. The records of the Defendant insurance company reflect that it has engaged in business in Tennessee and this Defendant is advised that it carried on such business without qualifying to do so.

It admits that Defendant Albert Williams is a resident of Davidson County, Tennessee, and that he is the duly appointed and qualified Commissioner of Insurance and Banking of the State of Tennessee.

IV

It is advised that the allegations contained in Paragraph IV are sustantially correct.

V

It is advised that the allegations contained in Paragraph V are substantially correct.

VI

It is advised that the allegations contained in Paragraph VI are substantially correct.

VII

It is advised that the allegations contained in Paragraph VII are substantially correct.

VIII

It is advised that the allegations contained in Paragraph VIII are substantially correct.

IX

It is advised that the allegations contained in Paragraph IX are substantially correct.

X

It is informed that the approval of the stockholders to the proposed plan of merger or consolidation was obtained as alleged in Paragraph X.

XI

It is advised that Security American Life Insurance Company of Tennessee and University National Life Insurance Company were merged or consolidated on the date and in the manner alleged in Paragraph XI.

XII

It is advised that the approval of the merger by the stockholders and directors of Security American Life Insurance Company, and the approval of the Commissioner of Insurance and Banking of Tennessee, was obtained by misrepresentation of the financial condition of the Oklahoma company, and that the board of directors of the Tennessee company was not advised that the Commissioner of Insurance and Banking had opposed and objected to the merger of the two companies.

It admits that the members of the board of directors of the Tennessee company were guilty of gross negligence in failing to fully investigate the condition of the Oklahoma company and in failing to study and analyze the plan of consolidation.

It admits that all of the directors learned of their error and negligence in adopting and effecting the merger plan but made no attempt to recover the loss suffered as a result or remove from office those responsible for it, but instead continued them in office for more than eighteen (18) months thereafter. This Defendant is advised that those in charge of the affairs of the Defendant insurance company wasted and squandered its funds through the guise of entertainment, travel and other expenses and that it has been called to the attention of the board of directors on a number of occasions, but that the directors ignored and were indifferent to the warnings.

XIII

It admits that Defendant University National Life Insurance Company published and circulated a number of financial statements, letters and advertisements which were false and misleading and that this Defendant called

the same to the attention of the Department of Insurance and Banking of Tennessee, the Securities Exchange Commission and the United States Postal Inspector. This Defendant is informed and believes, and therefore avers, that the publication and circulation of the numerous statements, letters and advertisements above mentioned violated the United States Mail Fraud Act and Securities Exchange Act and Sections 56-1201 et seq. of Tennessee Code Annotated.

It is advised that the alleged depletion of surplus and loss of business is substantially correct and that the statements published and circulated by the company to the contrary were false and untrue. It avers that these false and misleading statements were either known to be such by Defendants Scott, Elder, Costen, Scruggs, Manning, Deisenroth and Houser, or would have been known to them if they had exercised reasonable diligence and the degree of care and prudence with which they were charged as directors of the company.

It admits the errors or discrepancies in the statements filed with the Commissioners of Insurance of the States in which Defendant insurance company was engaged in business and that the alleged false and misleading statements were mailed to its stockholders, of which this Defendant is one. This Defendant avers that the directors of the company, de facto or de jure, were charged with the duty and responsibility of preventing the dissemination of false and misleading statements regarding the affairs of the company and their failure to do so constitutes gross negligence, wanton indifference and failure to exercise a reasonable degree of diligence, care and prudence.

XIV

It is advised that the allegations contained in Paragraph XIV are substantially correct.

XV

It is advised that the allegations of fact contained in Paragraph XV are substantially correct and that the conclusions as to the resulting damage are basic and are demonstrated to be true and correct by the company's operating loss and decrease of business in force.

XVI

It concurs in the conclusions asserted in Paragraph XVI.

XVII

It is advised that the allegations contained in Paragraph XVII are substantially correct.

XVIII

It admits that a group of stockholders of Defendant University National Life Insurance Company banded together in the late summer of 1962 and formed a stockholders' protective committee, and that they procured a charter of incorporation from the State of Tennessee as "University National Stockholders Protective Committee, Inc."

It denies that all of its directors brought a suit in their names seeking a recovery from its officers and directors of funds wasted and squandered. It would show unto the Court that two suits were brought and that both were dismissed. Some of the directors of Defendant Protective Committee were complainants in both suits but some were neither complainants or defendants in either. Others were complainants in one suit but not the other.

It is forced to admit that these suits caused some damage to the company but would respectfully show unto

the Court that its directors had sought to remedy the wastful practices, mismanagement, misuse of company funds and misconduct of its officers and directors by peaceful and private means but that their efforts were in vain. Its directors gave serious and prayerful consideration to the course which they should take before filing the two suits and came to the conclusion that the suits might effect a change in policy of the insura ce company in which they had large holdings and that there was a good chance that they could recover a judgment for the benefit of the Defendant insurance company. They concluded that something had to be done to stop the waste and mismanagement and that it was better to face the slight injury which the lawsuit might inflict and preserve and protect its assets rather than sit back and let it go into bankruptcy where the stockholders would lose everything they had invested. It is advised that their course of action brought about a complete change of policy and that its operating losses have been drastically reduced.

It admits that eight of its directors dismissed their suit which had been filed in Chancery Court for the use and benefit of all stockholders and admit that it was dismissed without the consent of the other stockholders. There are more than seven thousand five hundred (7500) stockholders many of whom have moved leaving no forwarding address, making it impossible to notify all of them or to obtain their consent to the dismissal of the suit. By dismissing their suit Defendant Protective Committee was able to obtain substantial representation on the board of directors and did not prejudice Plaintiffs' right to bring another suit seeking the same relief. The Complainants in the Chancery Court suit were without power to dismiss their suit without approval of the Court and without power to dismiss it with prejudice to the

other stockholders so as to bar their right of action for the same relief. This Defendant, therefore, avers that Plaintiffs have not been injured by the order dismissing the Chancery Court suit and that Plaintiffs' suit against them is barred by reason of the approval given the dismissal by the Chancellor.

It denies that the agreement of March 27, 1963, to dismiss the Chancery Court suit was for the benefit of a few and to the disadvantage of all other stockholders.

It denies that the new members of the board of directors of University National Life Insurance Company are conspiring and collaborating with the old members although there is evidence that some of the new members have aligned themselves with the old members on certain matters of policy. It denies that all of the policies condemned by the new members before the election of March 28, 1963, ~~are~~ being continued by the present board but it admits that much is left to be desired in the present operation.

It admits that Section 3.06 of the by-laws of University National Life Insurance Company provides for a meeting of the newly elected directors as alleged and admits that all of the directors did not consent to a meeting other than as provided therein. It is advised that the new directors were not aware of this provision of the company by-laws and that two of the members were not in attendance. It is also advised that the present chairman of the board of directors represented to Defendant Barry M. Carter that it had been agreed that he was to resign at this meeting and that he thus persuaded him to leave the said meeting. This Defendant is informed and believes that this was done with fraudulent intent so as to gain the advantage of having a majority of the directors represented by his group

and to deprive this Defendant of its agreed representation on the board of directors. By reason of the above and foregoing this Defendant believes and avers that this meeting was of doubtful legality.

It likewise is advised that the April meeting was improperly convened in that one of the duly elected directors was not notified thereof and was told that he was no longer a director. It avers that the action taken at this meeting is null and void and for naught held.

At the May and June meetings Milo C. Morgan, John R. C. Elder and Sidney E. Leiwant were permitted to participate in the proceedings and vote upon matters before the board when, according to this Defendant's information, they were not members of the board. It is advised that Defendant Leiwant has refused to accept the directors' attendance fees but that Defendant John R. C. Elder has been paid and accepted the same knowing that he was not legally a member of said board of directors. Defendant questions the legality of these meetings.

XIX

It knows nothing of any secret agreements to sell the company or its assets although rumors have been prevalent that first one and then the other of several directors have been attempting to effect a merger to his own financial advantage. The attorney for this Defendant has been told in confidence by clients that the merger agreed upon by the directors at their meeting on August 6, 1963, was procured by the payment of money to one or more directors of both companies.

It admits that the president of the company has accomplished very little, if anything, and that under his guidance very little new business has been acquired and at

the same time the company has suffered severe losses of business in force.

It is advised that Defendant Morgan's background in the insurance business is substantially as alleged.

XX

It admits the allegations as to the purchase of stock from Wayne Wallace and Clifford Thomas and is advised that this was an illegal transaction for which the officers and directors are personally liable. It is advised that these two individuals rebated a portion of this money to others involved in the merger. It is also advised that Defendant Green was paid excessive fees as was Defendant Administrators, Inc. It considers these fees to have been paid for some service other than that which is reflected by the records of the company.

It is advised that at least $2,000,000.00 was wasted and squandered and considers all of the directors in office prior to March 28, 1963, to be liable for the loss by reason of their failure to exercise reasonable diligence and prudence and because of their gross negligence in handling the affairs of the company.

XXI

It denies that it is liable to Plaintiffs in any amount and denies that its officers and directors have committed any act which would render them liable to the stockholders of University National Life Insurance Company.

XXII

It is informed that Plaintiffs' attorneys have made written demand upon the present directors to bring a suit against those responsible for the dissipation of the com-

pany's funds and is advised that they have neither agreed or refused take the action requested.

It admits that Plaintiffs' attorneys made demand upon the directors of this Defendant that they attempt to reinstate their suit in Chancery Court but would show unto the Court that said suit was not brought by or on behalf of University National Stockholders Protective Committee, Inc., but by eight of its directors individually. It is informed that they are precluded from attempting to reinstate or reinstitute their suit as a matter of law.

XXIII

This Defendant avers that Plaintiffs have failed to comply with Rule 23(b) of the Federal Rules of Civil Procedure in that their complaint is not verified, does not aver that they were shareholders at the time of the transactions of which they complain, that the action is not a collusive one so as to confer on this Court jurisdiction of matters over which it would not otherwise have jurisdiction, and does not set forth with sufficient particularity their efforts to require Defendant University National Life Insurance Insurance Company and its directors to institute the suit brought by them.

XXIV

This Defendant denies each and every material allegation contained in Plaintiffs' complaint not herein admitted or denied, insofar as the same affects this Defendant, its officers and directors, and denies the same as if herein specially and specifically denied.

CROSS-CLAIM AGAINST CO-DEFENDANTS

And now having answered the complaint of Plaintiffs this Defendant assumes the role of Cross-Plaintiff and for

cross-claim against Defendants University National Life Insurance Company, Marshall P. Scott, John R. C. Elder, John Costen, Albert M. Scruggs, Malcolm Deisenroth, Robert Lee Houser, Robert L. Dobbs, Sidney E. Leiwant, Milo C. Morgan and Rudolph V. Russell, says:

1. In March of 1962 a small group of stockholders of University National Life Insurance Company decided to try to ascertain the financial condition of the company and determine whether or not the increase of business as claimed by its officers and directors was being acquired on an actuarily sound basis. They first tried to obtain this information by direct contact with the president of the company, Defendant Marshall P. Scott. They were unable to procure an operating statement and in most cases were refused access to the records and were unable to make contact with Mr. Scott. Defendants Elder and Costen refused them the information they sought. As a consequence they employed an attorney and after considerable effort he procured a statement of the operation of the company for the year 1961 showing an operating loss of approximately $327,000.00, three times the loss of the previous year. By this time the day set for the annual meeting of the stockholders had arrived.

At the stockholders' meeting on March 22, 1962, they attempted to probe into the affairs and actual condition of the company by direct interrogatories addressed to the directors but received only vague and indefinite replies. In answer to their questions about the ever increasing expenses and operating losses, they were told not to worry, that "the more money you lose the sounder your company becomes financially," or words of similar import and substance. Cutting off discussion, by pre-arrangement the chairman of the meeting recognized a stockholder in attendance, a printer to whom Defendant life insurance com-

pany has paid many thousands of dollars, who moved that the board of directors be reduced to six with the privilege reserved to said directors to increase their number to eleven and the right to fill the vacancies so created. The purpose of the motion was, among other things, to remove two of the largest stockholders from the board and the only two persons on the board with any practical life insurance experience or knowledge of the business. Claiming proxies for 756,185 shares, Defendants Scott, Costen and Elder voted for the motion and Defendant Scott declared it carried. The result of the action taken was to divest the stockholders of the right to elect the corporate directors as provided by Section 48-403, Tennessee Code Annotated, as follows:

> "The directors of every corporation shall be chosen at the annual meeting of the stockholders thereof, to be held at the time and place provided for by the by-laws, by a plurality of the votes cast at such election in person or by proxy."

This Defendant is informed that Defendants Scott, Costen and Elder did not have proxies for the number of shares of stock which they claimed and that there is considerable doubt that there was a quorum present at said meeting. Moreover, such proxies as said Defendants did have were procured by false and fraudulent means. A certified copy of the proxies claimed was refused.

This Defendant, therefore, questions the validity, legality and effect of the election of directors of University National Life Insurance Company held March 22, 1962, the subsequent elections of officers and executive committeemen, directors, and the action taken by them in the ensuing year.

2. Because of their failure to obtain the information relating to the affairs of the company as desired and re-

quested by them, the aforesaid stockholders through their attorney, on March 23, 1962, the day following the election, dispatched a letter to Defendant University National Life Insurance Company requesting again certain details of the company's operating expenses and investments and suggested that the company curtail its expenses. Defendant life insurance company delayed its answer to their interrogatories until April 10, 1962, in which reply it failed to reveal the true facts requested.

3. Upon receipt of the letter of April 10, 1962, Defendant University National Life Insurance Company was requested to submit to an audit, which was denied. These stockholders again protested the excessive salaries being paid the company's officers and what they considered to be surplus personnel. In the face of increasing losses from operations the officers' salaries had been doubled. One part time officer, whose only duty was to countersign checks, was being paid $800.00 per month. Another officer employed on a full time basis elsewhere, and a vice president of a Memphis mortgage loan and real estate concern, was being paid $250.00 per month as a mortgage loan consultant. As a result of his position with the insurance company his employer was able to sell it more than $500,000.00 in mortgage loans which would not sell for their pro-rated acquisition cost on today's market. This mortgage loan house has continued to service the loans and has sold the insurance company its present home office building from which it received a $7,300.00 commission. It is informed that the secretarial personnel were working an average of 30 hours per week and were being paid in excess of $350.00 per month.

As a result of their continued protests and objections these stockholders were able to prevail upon the company to release incompetent and surplus personnel. The sav-

ings accomplished was considerable but small as compared to the continuing extravagance.

4. In the latter part of June or the first of July, 1962, it was learned that the president of the company had been arrested by the Vice Squad of the Memphis Police Department and had forfeited $153.00 in the City Court of Memphis for the reasons set forth in Plaintiffs' complaint. In some manner he had prevailed upon the two Memphis newspapers not to publish an account of his arrest but it had leaked out and it was found that the company employees in particular and the public in general had learned of the incident, resulting in a morale problem among the employees and serious damage to the acceptance of the company by prospective buyers of insurance. These stockholders asked for a conference with the board of directors which was, after considerable delay, granted. The board was requested to remove Defendant Scott as president and to remove all other directors who had known of the incident and taken no action to remove him. This request was denied.

5. On or about September 11, 1962, application was made to the Secretary of State for a charter of incorporation in the name of University National Stockholders Protective Committee, Inc., Cross-Plaintiff herein, which was, after approval of the Tennessee Department of Insurance and Banking, issued and duly recorded in the office of the Register of Shelby County, Tennessee.

This corporation was organized for the purpose of waging and conducting a campaign seeking proxies from the stockholders of Defendant University National Life Insurance Company in the approaching annual meeting of stockholders on March 28, 1963, at which time new directors would be elected.

At the organizational meeting Defendants Barry M. Carter, R. T. Matthews, James R. Tipler, Rudolph V. Russell, George Davis, Luke Borger, W. Frank Jameson, Roy Barnette, J. D. McElroy and Carl J. Gates were elected to the board of directors. Robert L. Taylor, attorney for the group, was also elected a director. Rudolph V. Russell was elected president, James R. Tipler was elected vice president and Robert L. Taylor secretary and treasurer.

The directors determined that a suit should be brought against those in charge of the affairs of the insurance company who had heaped the damage and abuse upon it. However, much of the misconduct and other acts about which they had cause to complain and for which they desired to seek redress for the benefit of all the stockholders had been committed prior to the date when the Protective Committee had become a stockholder and they were advised by their lawyer that a suit in the name of the Protective Committee might limit their cause of action to the acts committed by the directors of the insurance company from the date of acquisition of stock (in the insurance company) forward. It was therefore determined that eight of the directors would bring the suit in their individual capacities, and this was done. This suit was filed in the Chancery Court of Shelby County, Tennessee.

The complainants filing the Chancery Court suit (No. 65198-2 R.D.) were advised by counsel that it was not necessary to first make demand upon the directors of a corporation before bringing a derivative lawsuit where the directors were being asked to sue themselves or where it appeared that such a demand would be a useless, futile and fruitless gesture, and acting on such advice they filed their suit without making such demand. The Chancellor determined otherwise and dismissed their bill. Thereupon,

written demand was made upon all of the directors and upon the company to bring a suit for the redress sought in the first bill. When the company and the directors failed and refused, eight of the directors filed a new bill in the same Court, being designated as No. 65364-3 R.D. Defendants demurred and their demurrers were overruled.

6. In their first bill filed complainants sought an order requiring Defendant life insurance company to open its books to their auditors, Seidman & Seidman, their request having been previously refused. Upon the filing of the bill defendants in that case appeared in Court and consented to an examination by Seidman & Seidman. The president of the company expressed gratification that this firm of Certified Public Accountants had been selected to do the audit and promised the cooperation of the company, its directors and its officers. However, when the Seidman staff attempted to carry out its mission, the officers and employees interposed every obstacle and impediment at their command, and made it impossible to make a complete audit. As a result, Seidman & Seidman were restricted to a financial review of the operation of the company and an analysis of specified aspects of the areas known to have been subjected to abuse. As restricted as it was, it was found that at least $1,400,113.00 had been dissipated in the period commencing August 15, 1961, and ending September 25, 1962, as a direct result of gross mismanagement and misconduct of its directors. Seidman & Seidman stated in the review that this loss might run as high as $1,772,884.00.

7. In January of 1963 this Defendant and Cross-Plaintiff initiated its proxy campaign. In all it made 7 direct mailings to the stockholders. They called the attention of the stockholders to the many acts of malfeasance, misfeasance and non-feasance to the then constituted

board of directors, the continuing depletion of surplus, the loss of insurance in force as reflected by the statements published by the insurance company, the incompetence of its officers, acts of scandalous misconduct and the conflicting interests of a vice president whereby the firm by whom he was regularly employed and of which he occupied the same position of vice president had been unjustly enriched to the disadvantage of the insurance company. There was a tremendous response and Cross-Plaintiff is advised that by March 23, 1963, it had received proxies for more than 450,000 shares. Cross-Plaintiff incurred the following expenses in its effort to effect a change of policy or policies of the insurance company:

Attorney fees	$25,000.00
Audit expense	15,832.21
Miscellaneous expense (Direct mailing, etc.)	7,949.07
Total	$48,781.28

8. On March 25, 1963, University National Life Insurance Company instituted a suit in the Chancery Court of Shelby County, Tennessee, against University National Stockholders Protective Committee, Inc., George Davis, James R. Tipler and W. Frank Jameson, the Protective Committee's proxy committee who were empowered to cast the votes of the Protective Committee for proxies received. The suit sought an injunction against the Protective Committee and its proxy committee restraining them from voting the proxies in hand. The cause was set for hearing on Wednesday, March 27, 1963.

During a recess in the hearing the parties negotiated an agreement which this Cross-Plaintiff believed to be advantageous to all concerned. The insurance company agreed to dismiss its bill against the Protective Committee and its proxy committee and the eight individual stock-

holders agreed to dismiss their bill in cause No. 65364-3 R.D. Three of the company directors had filed libel suits and they agreed to dismiss those. The proxy committee of the insurance company and the proxy committee of the Protective Committee agreed to nominate five candidates each for the board of directors and each agreed to cast their respective proxies for all ten candidates. If their candidates were declared elected it was agreed that the board so constituted would elect a president and that he would become the eleventh director.

At the meeting of the stockholders commencing on March 28, 1963, the coalition slate above described prevailed over the Ryan-Wallace combine and on March 29, were declared to be the duly elected directors. These were:

Barry M. Carter
Ben F. Burch
J. R. Tipler
Rudolph V. Russell
Robert L. Dobbs
Malcolm Deisenroth, Jr.
John Costen
John R. C. Elder
Robert Lee Houser
Albert M. Scruggs

9. As hereinabove related, the by-laws of the company provide for only one scheduled meeting of the board of directors of University National Life Insurance Company, and that to follow immediately following the election of directors and *at the same place*. Following the election of directors on March 29, 1963, the incumbent officers and directors notified the new directors that the meeting was being moved from the King Cotton Hotel, where the stockholders meeting was had, to the company offices at 60

North Third Street. The new directors were not given a copy of the by-laws nor were they advised of the requirement that this directors' meeting be held at the same place as the stockholders' meeting. This Defendant and Cross-Plaintiff is advised that two of the directors did not attend this meeting and that Barry M. Carter was advised by Malcolm Deisenroth, who had been elected chairman of the board, that he was supposed to resign, that everyone had agreed to that, and he was thus coerced into leaving the meeting when in fact there was no such agreement. The directors did not waive the requirement that they meet at the place designated by the by-laws and Barry Carter did not resign, although Cross-Plaintiff is advised that the minutes signed by the president and the secretary reflect that he did so. Cross-Plaintiff is advised that Barry M. Carter was persuaded to leave by Defendant Deisenroth by premeditated fraud in order to create a situation where the incumbents would have the majority in attendance and could control the meeting. Cross-Plaintiff is advised that as a result of the irregular and unlawful acts of the incumbent directors, namely Scruggs, Houser, Costen, Elder and Deisenroth, all acts committed and actions taken at said directors' meeting are null and void and of no force or effect. At this meeting Milo C. Morgan was elected president, James B. Logan vice president and Robert L. Dobbs secretary. Dobbs, Russell, Elder and Morgan were elected to the executive committee.

10. The next meeting of the directors was held pursuant to notice on Friday, April 19, 1963. Barry M. Carter was not notified of the time and place of the meeting and no waiver of the same was procured from him. As a matter of fact, he was informed that he was no longer a member of the board of directors. At this meeting Cross-Plaintiff is informed that the board ordered expunged from

the minutes of the meeting of March 29, 1963, the declaration of resignation of Barry M. Carter. It also elected Defendant Sidney E. Leiwant to fill the vacancy created by the resignation of Ben F. Burch. Cross-Plaintiff is advised that this meeting was not lawfully convened and that all acts committed thereat, and all actions taken, are null and void and of no force and effect.

11. The next meeting of the board of directors was held on Friday, May 17, 1963. Several days prior thereto Defendants Costen and Elder resigned as directors, and Elder from the executive committee. This left the insurgents in control, five to four. Fearing that they would take advantage of the situation Cross-Plaintiff is advised that Defendants Morgan and Deisenroth called upon Costen and Elder to withdraw their resignations. Costen is alleged to have refused and Elder is alleged to have agreed. The matter was not submitted to the board of directors and Elder has never at any time been re-elected to the board. At the meeting Defendants Elder and Morgan are reported to have denied the resignation of Elder from the board and as a consequence he was permitted to attend the meeting, participate in the proceedings, vote on the matters before the board and was paid $100.00 for his attendance as if actually a member thereof. Defendan Morgan and Leiwant are also believed to have been permitted to attend this meeting, participate in the proceedings and vote on matters coming before the board.

12. The board of directors of Defendant University National Life Insurance Company met next on June 28, 1963, at which meeting Defendants Morgan, Elder and Leiwant were again permitted to attend, participate in the proceedings and vote upon the matters coming before the board of directors as though they were legally elected members thereof, Elder again being paid an attendance

fee of $100.00 and Leiwant being reimbursed for his expenses which are estimated to have exceeded $200.00.

13. The next meeting of the board of directors was called for Monday, August 5, 1963, and was recessed or adjourned from time to time through August 7, 1963. Again Defendants Elder, Morgan and Leiwant were permitted to attend, participate in the proceedings and vote upon the matters coming before the board for consideration. It is believed that Elder was again paid an attendance fee as a director and that Leiwant was reimbursed for his expenses, both travel and hotel and cafe.

It is believed that Morgan and Leiwant have travelled about the country at company expense as though they were duly elected directors and that Morgan is being paid a salary of $25,000.00 per year as president when there is serious doubt that he has been legally elected to said office.

The two principal matters before the board of directors at its August meeting were:

(a) Whether University National Life Insurance Company should pay the expenses of University National Stockholders Protective Committee, Inc., as detailed hereinabove in Paragraph 7 of this cross-claim and

(b) Whether University National Life Insurance Company should merge or consolidate with South Coast Life Insurance Company of Houston, Texas.

This Defendant is advised that the majority of the directors voted not to pay the expenses of the Protective Committee and voted to merge with the Texas company.

It is also advised that it voted not to pay the expenses of the Protective Committee despite written opinions from more than ten of the most prominent and respected law firms in Memphis, Nashville, Knoxville and Dallas, Texas,

declaring these expenses to be a legal obligation of the insurance company. It has learned that Defendant John R. C. Elder was the principal opponent as a personal matter and that he and his personal attorney contended that when complainants in Chancery Court cause No. 65364-3 R.D. dismissed their bill against Elder and others, that action resulted in a bar against any claim of the Protective Committee for its expenses even though the Protective Committee was not a party thereto nor mentioned in any of the pleadings, and despite the fact that the Protective Committee's claim did not arise or accrue until March 29, 1963, two days after the said settlement of cause No. 65364-3 R.D. was reached.

It is further advised that these Defendant directors voted to pay and have paid more than $19,000.00 in attorneys' fees in defending the former officers whose corrupt acts, misconduct and gross negligence have so seriously damaged the company financially and brought it into disrepute in the insurance industry; that they have voted to pay and have paid another firm of accountants more than $30,000.00 in an attempt to interfere with the examination by Seidman & Seidman when the results of the Seidman examination were tendered the company in advance of the employment of the second firm; that they voted to pay and have paid more than $20,000.00 in other expenses incident to the proxy campaign and the litigation hereinabove described; and that there are more than $10,000.00 of pending claims for which the company is liable which are attributable directly to that activity.

It is advised that University National Life Insurance Company is obligated to pay the expenses of the Protective Committee on the same legal premise that it based its authority to pay the expenses of the incumbent directors; that the payment of the expenses of the incumbent di-

rectors was not justified in that the money was spent in defending and attempting to perpetuate in office, officers and directors who were corrupt, immoral, incompetent and guilty of negligence of the grossest degree; that the actions of the Protective Committee, on the other hand, brought about the removal from office or resignation of those primarily guilty of the acts which have led a once healthy company to the brink of insolvency and disaster, and effected such a drastic and radical change in the policies of the company that, it is informed, it earned a profit from operations for the quarter ending June 30, 1963, its first profit in the last three years; that in the interest of justice the company is obligated to pay the expenses of the Protective Committee and obligated to recover from those responsible for the decline and decay of the company those expenditures which it made on their behalf; and that having refused to pay the expenses of the Protective Committee it is obligated to sue to recover the sums paid out in defense of its former officers and directors.

14. Defendants Russell and Dobbs committed themselves to vote for payment of the expenses of the Protective Committee prior to being elected to the board of directors of University National Life Insurance Company and have accepted the fruits of its labor and expenses but after their election to said board voted contrary to their commitments and obligations. Defendant Leiwant likewise violated his commitment and obligation to see that these expenses were paid, it not being conceded that he was entitled to vote on said issue. This Defendant is advised that the vote of Leiwant, Dobbs and Russell would have been sufficient to carry the motion for reimbursement of the Protective Committee's expenses and that if Elder, Morgan and Leiwant are determined to have been permitted to vote unlawfully, the votes of Russell and Dobbs would have been sufficient.

It is, therefore, advised that all of the members of the board of directors of Defendant life insurance company who voted against payment of the expenses incurred by University National Stockholders Protective Committee, Inc., namely Defendants Scruggs, Houser, Russell, Dobbs and Deisenroth, and Defendants Elder, Morgan and Leiwant, if they should be determined as having been legally elected, are personally liable to this Cross-Plaintiff for said expenses.

15. Cross-Plaintiff avers that it is itself a stockholder of University National Life Insurance Company and as such has an interest in the make-up and constitutency of the board of directors of Defendant insurance company and that Defendants Morgan, Elder and Deisenroth have conspired among themselves to defraud the stockholders and the directors of the company by rescinding and cancelling the resignation of John R. C. Elder from the board of directors of the company without approval or knowledge of the other directors; and that Defendant Elder is guilty of obtaining money under false pretences as a result of said conspiracy.

16. Cross-Plaintiff further avers that Defendants Morgan, Elder, Costen, Houser, Deisenroth and Scruggs mailed or caused to be mailed in interstate commerce false and fraudulent statements relating to the financial condition, operating losses and insurance in force of University National Life Insurance Company, and solicited proxies of stockholders by the use of the United States mail in interstate commerce in violation of the Securities Exchange Act of 1934, Title 15, Sec. 77(e) et seq., U.S.C.A.

WHEREFORE, CROSS-PLAINTIFF PRAYS:

1. That Cross-Plaintiff have and recover of Defendants University National Life Insurance Company, Albert M. Scruggs, John R. C. Elder, John Costen, Malcolm Deisenroth, Jr., Robert Lee Houser, Milo C. Morgan, Sidney E.

Leiwant, Robert L. Dobbs and Rudolph V. Russell the sum of $48,781.28 with interest at the rate of six per cent per annum from March 29, 1963, the costs of this cause, its reasonable attorney fees and such punitive damages to which it may be entitled under the circumstances.

2. That Cross-Plaintiff have and recover of Defendants Albert M. Scruggs, John R. C. Elder, John Costen, Malcolm Deisenroth, Jr., Robert Lee Houser, Milo C. Morgan, Sidney E. Leiwant, Robert L. Dobbs and Rudolph V. Russell, for the benefit of Defendant University National Life Insurance Company, all funds and the monetary equivalent of other things of value belonging to the company spent in defending those officers and directors of said insurance company who are determined to have inflicted damage upon and injury to it, either by corruption, waste, mismanagement, misconduct, immorality or scandalous behavior, those who have condoned, aided or abetted in the same, or those who permitted these acts and practices through gross negligence or ethical indifference.

3. That the Court by means of a declaratory judgment determine (1) whether Milo C. Morgan, John R. C. Elder or Sidney E. Leiwant have been legally elected to the board of directors of University National Life Insurance Company, (2) whether those claiming to be members of the executive committee and/or officers of the company have been duly and legally elected and (3) whether the meetings of the directors held on March 29, April 19, May 17, June 28 and August 5-7, 1963, have been legally called, convened and conducted.

4. That Cross-Plaintiff have and recover a judgment against Milo C. Morgan, Malcolm Deisenroth, Jr., and John R. C. Elder for the exclusive benefit of University National Life Insurance Company and/or all stockholders situated similarly to Cross-Plaintiff, for an amount equal to the

damages inflicted upon the company as a result of the conspiracy between them defrauding the stockholders and other directors, and for punitive damages.

5. That Cross-Plaintiff have such other, further and general relief to which they may be entitled under the facts.

6. That the issues be tried to a jury when joined.

/s/ Robert L. Taylor
/s/ Lloyd C. Kirkland, Jr.
/s/ Robert E. Joyner

Attorneys for Defendant and Cross-Plaintiff University National Stockholders Protective Committee, Inc.

Taylor & Taylor
Of Counsel

STATE OF TENNESSEE)
)
COUNTY OF SHELBY)

ROBERT L. TAYLOR, Secretary and Treasurer of University National Stockholders Protective Committee, Inc., and one of the Attorneys for said corporation, makes oath that the allegations contained in the above and foregoing Answer and Cross-Claim as true, are true, and that those made on information or advice he verily believes to be true; that Cross-Plaintiff was a shareholder at the time of the transaction for which a judgment is sought; that the action is not a collusive one to confer upon this Court jurisdiction of any action of which it would not otherwise have jurisdiction; that it has requested Defendant University National Life Insurance Company and its directors to bring suit to recover funds paid out in defense of officers and directors of the company who have inflicted

injury upon it and that it has failed and refused to do so and has ignored Cross-Plaintiff's request; that it has not made demand upon the company or its directors to bring suit to recover the damages inflicted upon it by the conspiracy entered into by Defendants Morgan, Deisenroth and Elder because it would be a useless, futile and fruitless gesture and premature until such time as their legal status as officers and directors is determined in this cause.

s/ Robert L. Taylor
ROBERT L. TAYLOR

SWORN TO and subscribed before me this 8th day of August, 163.

s/ Lloyd C. Kirkland, Jr.
Notary Public

My Commission Expires:

Oct. 2, 1965

CERTIFICATE OF SERVICE

I, ROBERT L. TAYLOR, one of the attorneys for Defendant and Cross-Plaintiff University National Stockholders Protective Committee, Inc., hereby certify that I have this 8th day of August, 1963, served a copy of the above and foregoing Answer and Cross-Claim upon Anthony J. Sabella, Esq., Attorney at Law, Columbian Mutual Tower, Memphis, Tennessee, by mailing a copy of the same to him, postage prepaid.

s/ Robert L. Taylor
ROBERT L. TAYLOR

AFFIDAVIT OF ROBERT L. TAYLOR AS TO HIS AUTHORITY TO ACT FOR UNIVERSITY NATIONAL STOCKHOLDERS PROTECTIVE COMMITTEE, INC.

STATE OF TENNESSEE)
)
COUNTY OF SHELBY)

ROBERT L. TAYLOR, being of age and first duly sworn according to law, deposed and said:

I am a citizen and resident of Memphis, Shelby County, Tennessee, and a lawyer practicing at the Memphis Bar. I am a member of the law firm of Taylor & Taylor with offices at 208 Adams Avenue, Memphis, Tennessee.

I am a director of University National Stockholders Protective Committee, Inc., and I am also its Secretary and Treasurer. I represent University National Stockholders Protective Committee, Inc., as its attorney and have done so since its inception.

The last official meeting of the directors of University National Stockholders Protective Committee, Inc., was held on May 23, 1963, pursuant to written notice. All directors were present except Vernon Goedecke and R. T. Matthews. A resolution was introduced authorizing the President and Secretary to surrender the charter of the corporation as soon as its claims for moneys owed it were collected and its debts paid. Carl J. Gates and J. R. Tipler were elected liquidating agents and given authority to collect the moneys due the corporation and disburse the funds when collected, and to bring suit in their own names as such agents or in the name of the corporation, as might be required, and to perform all acts which the corporation was authorized to do. Carl J. Gates asked that he be re-

lieved of the responsibility of serving and Barry M. Carter was elected in his place and stead. This action by the board of directors was without dissent by any director. A copy of the resolution above mentioned is attached hereto as Exhibit "A".

Barry M. Carter and J. R. Tipler are both directors of University National Stockholders Protective Committee, Inc., and University National Life Insurance Company. I am informed that both Mr. Tipler and Mr. Carter called upon University National Life Insurance Company at the meeting of its directors in August of 1963 to pay the claim of the Protective Committee as set out in the Cross-Claim of the Protective Committee filed against University National Life Insurance Company in this cause and advised its other directors that a suit would be filed if the claim was not paid. The majority of the directors of the insurance company voted against the payment of the Protective Committee's claim and thereupon Mr. Carter and Mr. Tipler instructed and authorized me to take such steps as I considered necessary. I associated Mr. Robert E. Joyner and Mr. Lloyd C. Kirkland, Jr., who were at that time associated with me in the practice of law, with me and filed a Cross-Claim in the suit pending in this Court in Cause No. 4941.

s/ Robert L. Taylor
ROBERT L. TAYLOR

SWORN TO and subscribed before me this 16th day of October, 1963.

s/ Philip L. Peeler
Notary Public

My Commission Expires:

16 December 1963.

CERTIFICATE OF SERVICE

I, ROBERT L. TAYLOR, hereby certify that I have this 16th day of October, 1963, served a copy of the above and foregoing affidavit upon Thomas E. Douglas, Jr., attorney for Cross-Defendant Robert L. Dobbs, by mailing a copy of the same to him at his office in the Exchange Building, Memphis, Tennessee, postage prepaid.

s/ Robert L. Taylor
ROBERT L. TAYLOR

MOTION TO EXPUNGE AND STRIKE FROM THE RECORD THE MOTION OF CROSS-DEFENDANT ROBERT L. DOBBS TO REQUIRE PLAINTIFFS TO GIVE PRE-TRIAL DEPOSITIONS

Defendants J. R. TIPLER, GEORGE A. DAVIS, BARRY M. CARTER, LUKE BORGER, VERNON GOEDECKE, R. T. MATTHEWS and CARL J. GATES, and ROBERT L. TAYLOR, attorney for said Defendants, move the Court to expunge and strike from the record the "MOTION OF CROSS-DEFENDANT ROBERT L. DOBBS TO REQUIRE PLAINTIFFS TO GIVE DEPOSITIONS" filed with the Clerk of this Court on September 23, 1963, and the "ORDER REQUIRING PLAINTIFFS TO GIVE PRE-TRIAL DEPOSITIONS" entered by the Court on September 26, 1963.

The caption "MOTION TO REQUIRE PLAINTIFFS TO APPEAR AND GIVE DEPOSITIONS" is misleading in that the persons named therein, i.e., J. R. TIPLER, ROBERT L. TAYLOR, GEORGE A. DAVIS, BARRY M. CARTER, J. D. McELROY, LUKE BORGER, VERNON GOEDECKE, R. T. MATTHEWS and CARL J. GATES are not Plaintiffs and the caption is not sufficient to put the named persons who are Defendants, and not Plaintiffs, on notice that such a motion had been filed.

The "MOTION TO REQUIRE PLAINTIFFS TO APPEAR AND GIVE DEPOSITIONS" was not served upon either ROBERT L. TAYLOR, LLOYD C. KIRKLAND, JR., or ROBERT E. JOYNER and a copy of the same was not left at their respective offices as certified to by THOMAS E. DOUGLAS, JR., prior to filing said motion.

Neither the named Defendants nor their attorneys were notified by Defendant ROBERT L. DOBBS or his attorney, THOMAS E. DOUGLAS, JR., that the motion would be presented to the Court on Tuesday, September 24, 1963, and as a consequence they were not in attendance and it is made to appear that they are thus flaunting the dignity of the Court and ignoring the Court in this matter.

A copy of the "ORDER REQUIRING PLAINTIFFS TO GIVE PRE-TRIAL DEPOSITIONS" was received in the United States Mail by the attorney for Defendants J. R. TIPLER, GEORGE A. DAVIS, BARRY M. CARTER, LUKE BORGER, R. T. MATTHEWS and VERNON GOEDECKE on September 27, 1963, having been mailed to him by the Clerk of the Court. The order overrules these Defendants' "MOTION TO QUASH" filed on their behalf in this cause on September 12, 1963, without Defendants' attorney having any notice that the same was to be taken up with the Court and without having an opportunity to be heard when these Defendants are advised that the "MOTION TO QUASH" on their behalf was good and sufficient and should have been sustained in accordance with the applicable law of the Federal Courts.

The order of the Court requiring these Defendants to appear and give their depositions leaves the impression that they had intentionally ignored a valid subpoena or order of the Court when as a matter of fact the subpoenas issued on behalf of Cross-Defendant ROBERT L. DOBBS were void and inoperative as being in violation of Rule 45(c),

and 45(d)(1) of the Federal Rules of Civil Procedure which attorney for these Defendants is prepared to appear and make argument relating thereto if the Court is willing to hear and determine the same. This exact question was before this Court in the case of *Dunn, et al* v. *Retail Clerks, et al*, Civil Action No. 4399, at which time the Court held the principal grounds upon which these Defendants' "MOTION TO QUASH" was bottomed was good and that irrespective of its merit, it constituted a self-executing order and had the legal effect of staying the taking of the depositions until the "MOTION TO QUASH" was heard and determined.

WHEREFORE, Defendants J. R. TIPLER, GEORGE A. DAVIS, BARRY M. CARTER, LUKE BORGER, VERNON GOEDECKE, R. T. MATTHEWS and CARL J. GATES and their attorney, ROBERT L. TAYLOR, move the Court to enter an order setting aside and vacating its "ORDER REQUIRING PLAINTIFFS TO GIVE PRE-TRIAL DEPOSITIONS" filed in this cause on September 26, 1963, and to strike and expunge from the record Cross-Defendant ROBERT L. DOBBS' "MOTION TO REQUIRE PLAINTIFFS TO APPEAR AND GIVE DEPOSITIONS".

s/ Robert L. Taylor
Robert L. Taylor

Attorney for Defendants J. R. Tipler, George A. Davis, Barry M. Carter, Luke Borger, Vernon Goedecke, R. T. Matthews and Carl J. Gates

STATE OF TENNESSEE)
)
COUNTY OF SHELBY)

ROBERT L. TAYLOR makes oath that the allegations made in the above and foregoing motion are true except

as to the dates of filing by Cross-Defendant ROBERT L. DOBBS of his "MOTION TO REQUIRE PLAINTIFFS TO APPEAR AND GIVE DEPOSITIONS" and the filing of the "ORDER REQUIRING PLAINTIFFS TO GIVE PRE-TRIAL DEPOSITIONS," which information he abstracted from the Clerk's file in this case and except as to the service of said motion and notice upon ROBERT E. JOYNER and LLOYD C. KIRKLAND, JR., who have advised him that no such motion or notice was served upon them.

s/ Robert L. Taylor
ROBERT L. TAYLOR

SWORN TO and subscribed before me this 11th day of October, 1963.

s/ Philip L. Peeler
(Seal) Notary Public

My Commission Expires:

16 December 1963

NOTICE

TO: Thomas E. Douglas, Jr.
Attorney for Cross-Defendant
Robert L. Dobbs
Exchange Building
Memphis, Tennessee

Please take notice that I will bring this matter on to be heard before Honorable Bailey Brown, Judge of the United States District Court, Western District of Tennessee, Western Division, at Memphis, at 2 o'clock p.m. on Friday, October 18, 1963, or as soon thereafter as counsel can be heard.

s/ Robert L. Taylor
ROBERT L. TAYLOR

CERTIFICATE OF SERVICE

I, ROBERT L. TAYLOR, hereby certify that I have this 11th day of October, 1963, served a copy of the above and foregoing motion upon Thomas E. Douglas, Jr., attorney for Cross-Defendant Robert L. Dobbs, by mailing a copy of the same to him at his office in the Exchange Building, Memphis, Tennessee, postage prepaid.

s/ Robert L. Taylor
ROBERT L. TAYLOR

AFFIDAVIT

STATE OF TENNESSEE)
)
COUNTY OF SHELBY)

BARRY M. CARTER, being of age and first duly sworn according to law, deposed and said:

I am a citizen and resident of Memphis, Shelby County, Tennessee, and I am partner with my father in the Easy Way Food Store at 80 North Main Street in Memphis.

I am a director in both the University National Stockholders Protective Committee, Inc., and University National Life Insurance Company. The last meeting of the directors of University National Stockholders Protective Committee, Inc., was held at the home of Mr. and Mrs. J. R. Tipler on or about May 23, 1963. The last meeting of the directors of University National Life Insurance Company was held on or about August 5, 1963, and extended through August 6 and 7. It is my understanding that it was recessed on August 7 until August 30, 1963. I did not attend the recessed session.

At the meeting of the directors of University National Stockholders Protective Committee on May 23, 1963, the

directors directed the President and Secretary to surrender the charter of incorporation when all indebtednesses to the corporation had been paid. It elected Carl J. Gates and J. R. Tipler as liquidating agents and authorized them to bring suit in their own names or in the name of the corporation to collect sums owing the corporation or claims which the corporation had against others. At this same meeting Mr. Gates subsequently asked to be relieved of this responsibility and I was elected in his place and stead. There were no objections by any of the directors. Mr. Rudolph Russell was present but refused to preside. Mr. Robert L. Dobbs, who is not a director, was also present at the special invitation of the directors.

At the meeting of the directors of University National Life Insurance Company beginning on August 5 and ending on August 7 Mr. Tipler and I sought to have the company pay the claim of University National Stockholders Protective Committee, Inc. The Committee had furnished a large number of letters from large law firms in which it was stated that such payment was not only proper but that it was the duty and obligation of University National Life Insurance Company to pay the same. Before the matter came to a vote I advised the directors of the life insurance company that if they did not pay it that a suit would be filed by the Protective Committee to collect it.

Mr. Tipler and I subsequently turned the matter over to Mr. Taylor, the Protective Committee's Attorney, and instructed him to take such action as he felt necessary under the circumstances. He then drew the Cross-Claim filed in this cause on behalf of University National Stockholders Protective Committee, Inc., and furnished Mr. Tipler and me with a copy of the same.

On September 9, 1963, a number of the directors met informally at the home of Mr. and Mrs. J. R. Tipler. Present were Mr. Tipler, Mr. Taylor, Mr. George Davis, Mr. Carl Gates, Mr. Luke Borger, Mr. R. T. Matthews and myself. Mr. Taylor advised us that Mr. Russell had raised the question of whether or not he was authorized to represent the Protective Committee and filed the subject Cross-Claim. The directors present unanimously agreed that he had proceeded properly and that he should prosecute the Cross-Claim to a conclusion.

s/ Barry M. Carter
BARRY M. CARTER

SWORN TO and subscribed before me this 27th day of September, 1963.

s/ Philip L. Peeler
Notary Public

My Commission Expires:

16 December 1963

I certify that I have served a copy of this pleading on adversary counsel. This 16th day of October 1963.

s/ Robert L. Taylor
Solicitor

AFFIDAVIT

STATE OF TENNESSEE)
)
COUNTY OF SHELBY)

JAMES R. TIPLER, being of age and first duly sworn according to law, deposed and said:

I am a citizen and resident of Shelby County, Tennessee, and I am the owner of Crown Electric Company, 184 Neil Street in Memphis.

I am a director in both University National Life Insurance Company and University National Stockholders Protective Committee, Inc. I am also Vice President of University National Stockholders Protective Committee, Inc.

The last meeting of the directors of University National Stockholders Protective Committe, Inc., was held at my home on May 23, 1963. Present were Mr. Rudolph Russell, Mr. Robert L. Taylor, Mr. Barry M. Carter, Mr. George Davis, Mr. Luke Borger, Mr. Carl Gates and myself. Mr. Frank Jameson and Mr. Roy Barnette came in before the meeting was over but after most of the business had been transacted. Robert L. Dobbs attended at the special invitation of the board of directors. Mrs. Barnette, Mrs. Davis, Mrs. Borger and my wife also attended.

Mr. Russell, the President of University National Stockholders Protective Committee, Inc., was requested to call the meeting to order and preside but he declined to do so. Without objection Robert L. Taylor, the Secretary, presided over the meeting.

It was determined by the directors that the charter of the corporation should be dissolved as soon as it collected all indebtednesses due it and paid all of its bills. The President and the Secretary were directed to surrender the charter when this had been done. Carl Gates and I were elected liquidating agents and authorized to bring suit in our own names or in the name of the corporation to collect all sums owing it. Mr. Gates subsequently asked to be relieved of this responsibility and Barry M. Carter was elected in his place and stead. There was no objection by any of the directors.

At the meeting of the directors of University National Life Insurance Company beginning on August 5 and end-

ing on August 7 Mr. Carter, who is also a director of the insurance company, and I sought to prevail upon the directors to pay the claim of University National Stockholders Protective Committee, Inc. The Protective Committee had brought about a change in management and had elected 5 directors. Mr. Carter advised the directors of the insurance company that the Protective Committee was going to file suit if the insurance company did not pay the claim. Nevertheless the majority of the directors voted against paying the claim and it has not been paid.

Mr. Carter and I turned the matter over to Mr. Taylor, University National Stockholders Protective Committee's attorney, and instructed him to take such action as he felt necessary under the circumstances. I was given a copy of the Cross-Claim which he filed.

On September 9, 1963, a number of the directors met informally at my house. Present were Mr. Taylor, Mr. George Davis, Mr. Carl Gates, Mr. Barry M. Carter, Mr. Luke Borger, Mr. R. T. Matthews and myself. Mr. Taylor advised us that Mr. Russell had raised the question whether he was authorized to represent University National Stockholders Protective Committee, Inc., as attorney and to file its Cross-Claim in this case. All of the directors present unanimously agreed that he had proceeded in accordance with their wishes and that he should prosecute the Cross-Claim to a conclusion.

s/ James R. Tipler
JAMES R. TIPLER

SWORN TO and subscribed before me this the 27th day of September, 1963.

s/ Philip L. Peeler
Notary Public

My Commission Expires:

16 December

I certify that I have served a copy of the pleading on adversary counsel this 16th day of October, 1963.

s/ Robert L. Taylor
Solicitor

AFFIDAVIT OF LLOYD C. KIRKLAND, JR.

STATE OF TENNESSEE)
)
COUNTY OF SHELBY)

Personally appeared before me, the undersigned official, LLOYD C. KIRKLAND, JR., who, being of age and first duly sworn according to law, deposed and said:

I am a citizen and resident of Memphis, Shelby County, Tennessee, and reside at 4606 Helene Avenue. I am a practicing attorney at the Memphis Bar. For several years prior to October 1, 1963, I was a partner in the firm of Taylor & Taylor with offices at 208 Adams Avenue, Memphis, Tennessee.

At the request of Mr. Robert L. Taylor I joined with him as an associate attorney in the above styled case. I have since withdrawn as an attorney of record in that case because of the fact that I will in the next few weeks move my offices from 208 Adams Avenue and because of the fact that the partnership was dissolved. Mr. Taylor was the leading counsel in the case and it was anticipated that I was to assist him. I have not withdrawn because of any lack of confidence in the case but because of the circumstances above set out.

This case was filed in this Court on July 18, 1963, and we filed an answer and cross-claim on August 8, 1963, on behalf of University National Stockholders Protective Committee, Inc., which Mr. Taylor has represented since its in-

ception. On the same day Mr. Taylor filed on behalf of Defendants Barry M. Carter, Luke Borger, George Davis, Carl J. Gates, Vernon Goedecke, R. T. Matthews and James R. Tipler a motion to dismiss the Complaint as to those individual Defendants.

Since the filing of the initial pleading in this case no one has served upon me a "MOTION TO REQUIRE PLAINTIFFS TO APPEAR AND GIVE DEPOSITIONS" or a motion to require Defendants J. R. Tipler, George A. Davis, Barry M. Carter, Luke Borger, Vernon Goedecke, R. T. Matthews and Carl J. Gates or their attorney, Robert L. Taylor, to appear and give their depositions in this cause nor was a notice served upon me to appear before Honorable Bailey Brown, Judge of the United States District Court, Western District of Tennessee, Western Division, at Memphis, at 4:30 p.m. on Tuesday, September 24, 1963, or at any other time and place for the purpose of having the above mentioned motions determined and disposed of by the Court. I had absolutely no notice or knowledge of the said motion and notice until I was advised that the same had been filed and an order entered pursuant thereto on September 26, 1963, by Mr. Robert L. Taylor. I have inquired of our secretaries to whom such a motion and notice would have been left if I were not present and I am informed that there was no such motion or notice left with them for me.

s/ Lloyd C. Kirkland, Jr.
LLOYD C. KIRKLAND, JR.

SWORN TO and subscribed before me this the 11th day of October, 1963.

s/ Philip L. Peeler
Notary Public

My Commission Expires:

16 December, 1963.

CERTIFICATE OF SERVICE

I, ROBERT L. TAYLOR, hereby certify that I have this 11th day of October, 1963, served a copy of the above and foregoing affidavit upon Thomas E. Douglas, Jr., attorney for Cross-Defendant Robert L. Dobbs, by mailing a copy of the same to him at his office in the Exchange Building, Memphis, Tennessee, postage prepaid.

ROBERT L. TAYLOR

AFFIDAVIT OF ROBERT E. JOYNER

STATE OF TENNESSEE)
)
COUNTY OF SHELBY)

Personally appeared before me, the undersigned official, ROBERT E. JOYNER, who, being of age and first duly sworn according to law, deposed and said:

I am a citizen and resident of Memphis, Shelby County, Tennessee, and reside at 55 Mary Ann Drive. I am a practicing attorney at the Memphis Bar. For several years prior to October 1, 1963, I was a partner in the firm of Taylor & Taylor with offices at 208 Adams Avenue, Memphis, Tennessee.

At the request of Mr. Robert L. Taylor I joined with him as an associate attorney in the above styled case. I have since withdrawn as an attorney of record in that case because of the fact that I am now associated with the firm of Wrape & Hernly with offices in the Sterick Building and have been since October 1, 1963, and because of the fact that the partnership was dissolved. Mr. Taylor was the leading counsel in the case and it was anticipated that I was to assist him. I have not withdrawn because of any

lack of confidence in the case but because of the circumstances above set out.

This case was filed in this Court on July 18, 1963, and we filed an answer and cross-claim on August 8, 1963, on behalf of University National Stockholders Protective Committee, Inc., which Mr. Taylor has represented since its inception. On the same day Mr. Taylor filed on behalf of Defendants Barry M. Carter, Luke Borger, George Davis, Carl J. Gates, Vernon Goedecke, R. T. Matthews and James R. Tipler a motion to dismiss the Complaint as to those individual Defendants.

Since the filing of the initial pleading in this case no one has served upon me a "MOTION TO REQUIRE PLAINTIFFS TO APPEAR AND GIVE DEPOSITIONS" or a motion to require Defendants J. R. Tipler, George A. Davis, Barry M. Carter, Luke Borger, Vernon Goedecke, R. T. Matthews and Carl J. Gates or their attorney, Robert L. Taylor, to appear and give their depositions in this cause nor was a notice served upon me to appear before Honorable Bailey Brown, Judge of the United States District Court, Western District of Tennessee, Western Division, at Memphis, at 4:30 p.m. on Tuesday, September 24, 1963, or at any other time and place for the purpose of having the above mentioned motions determined and disposed of by the Court. I had absolutely no notice or knowledge of the said motion and notice until I was advised that the same had been filed and an order entered pursuant thereto on September 26, 1963, by Mr. Robert L. Taylor. I have inquired of our secretaries to whom such a motion and notice would have been left if I were not present and I am informed that there was no such motion or notice left with them for me.

s/ Robert E. Joyner
ROBERT E. JOYNER

SWORN TO and subscribed before me this the 11th day of October, 1963.

s/ Philip L. Peeler
(Seal) Notary Public

My Commission Expires:

16 December, 1963

CERTIFICATE OF SERVICE

I, ROBERT L. TAYLOR, hereby certify that I have this 11th day of October, 1963, served a copy of the above and foregoing affidavit upon Thomas E. Douglas, Jr., attorney for Cross-Defendant Robert L. Dobbs, by mailing a copy of the same to him at his office in the Exchange Building, Memphis, Tennessee, postage prepaid.

ROBERT L. TAYLOR

MOTION TO REQUIRE ROBERT L. DOBBS TO COMPENSATE WITNESS UNDER THE PROVISIONS OF RULE 30(g)(1) OF THE FEDERAL RULES OF CIVIL PROCEDURE

Robert L. Taylor, attorney for Defendants J. R. Tipler, George A. Davis, Barry M. Carter, Luke Borger, Vernon Goedecke, R. T. Matthews, Carl J. Gates and University National Stockholders Protective Committee, Inc., moves the Court to require Defendant and Cross-Defendant Robert L. Dobbs to compensate him by reason of the failure of said Defendant and Cross-Defendant Robert L. Dobbs to attend the taking of the deposition of Robert L. Taylor pursuant to notice.

On or about September 26, 1963, Thomas E. Douglas, Jr., attorney for Defendant and Cross-Defendant Robert L. Dobbs, served notice upon Robert L. Taylor that he

would on Wednesday, October 2, 1963, commencing at 9:30 o'clock a.m. in the Clerk's Office of the United States District Court, Western District of Tennessee, Western Division, at Memphis, take the testimony of Robert L. Taylor on oral examination in this cause to continue from day to day until completed and on or about the same day caused a subpoena to be issued and served upon Robert L. Taylor requiring him to appear in the Office of the Clerk of the United States District Court, Western District of Tennessee, Western Division, in the City of Memphis, Tennessee, at 9:30 o'clock a.m. on October 2, 1963, to testify on pre-trial deposition.

Robert L. Taylor appeared at the designated place and at the appointed hour and remained in attendance on October 2, 1963, throughout the taking of the depositions of certain Defendants. By agreement the taking of depositions was adjourned until October 3, 1963, at 1:30 o'clock p.m., at which time the taking of depositions was begun and continued until approximately 6 o'clock p.m. of that day. By agreement the taking of depositions was adjourned at or about 6 o'clock p.m. on October 3, 1963, until October 7, 1963.

The notice given and the subpoena requiring Robert L. Taylor to appear at the Clerk's Office at 9:30 o'clock a.m. from day to day, he appeared at the Office of the Clerk of the District Court in Memphis at 9:30 o'clock a.m. on October 2, 1963, and remained in attendance until 10:10 o'clock a.m. at which time neither Defendant and Cross-Defendant Robert L. Dobbs or his attorney, Thomas E. Douglas, Jr., or a court reporter had appeared and he departed to attend to other business, but was seriously inconvenienced by the failure of Defendant and Cross-Defendant Robert L. Dobbs to make his appearance at the appointed hour.

By agreement Robert L. Taylor appeared in the office of Canada, Russell & Turner at approximately 2:15 o'clock p.m. on October 7, 1963, and submitted to pre-trial discovery examination. At approximately 6:03 o'clock p.m. after he had been examined by all of the lawyers then in attendance with the exception of Mr. Thomas Price, Mr. Thomas E. Douglas, Jr., announced that his watch showed it to be 3 minutes after 6 and suggested adjournment until the following day. Robert L. Taylor requested that the examination be concluded so that he could attend to other matters in which he was engaged. Mr. Douglas, Mr. Price and Mr. Dobbs refused to conclude the examination and requested Robert L. Taylor to present himself at 1 o'clock p.m., on the following day October 8, 1963. Robert L. Taylor announced that he was unwilling to make any such agreement at which time the attorney for Defendant University National Life Insurance Company acting as spokesman for all the lawyers then present announced that the examination was concluded for the day.

On Tuesday, October 8, 1963, at 9:25 o'clock a.m., Robert L. Taylor presented himself at the Office of the Clerk of the United States District Court, Western District of Tennessee, Western Division, at Memphis, in compliance with the notice and subpoena previously served upon him. He asked the Deputy Clerk to make a note of the time and remained in the Office of the Clerk until 9:50 o'clock a.m. at which time he asked the Clerk to make a note that neither Robert L. Dobbs nor Thomas E. Douglas, Jr., had made an appearance and at that time he departed and returned to his office.

On October 1, 1963, Robert L. Taylor as attorney for Defendants J. R. Tipler, George A. Davis and Barry M. Carter and Defendant and Cross-Plaintiff University National Stockholders Protective Committee, Inc., served

notice upon the attorneys for Robert L. Dobbs and Rudolph V. Russell and upon Thomas E. Douglas, Jr., in his individual capacity that said Defendants would take the testimony on oral examination of Messrs. Robert L. Dobbs, Thomas E. Douglas, Jr., and Rudolph V. Russell before an officer authorized to take the same and to administer oaths on Tuesday, October 8, 1963, at 2 o'clock p.m. and from day to day thereafter at the offices of Taylor & Taylor, 208 Adams Avenue, Memphis, Tennessee, and notified all attorneys of record in this case of the taking of these depositions by serving a copy of said notice upon them by United States Mail, postage prepaid. On October 2, 1963, Robert L. Taylor as attorney for Defendants J. R. Tipler, George A. Davis and Barry M. Carter and Defendant and Cross-Plaintiff University National Stockholders Protective Committee, Inc., caused to be issued and served upon Messrs. Robert L. Dobbs, Thomas E. Douglas, Jr., and Rudolph V. Russell presented themselves at the appointed place and time and announced that they would not give their depositions as they had been notified to do and for which subpoena had issued unless the attorney for Defendants J. R. Tipler, George A. Davis and Barry M. Carter and Defendant and Cross-Plaintiff University National Stockholders Protective Committee, Inc., first submitted himself to further examination. The appointed place and time had been designated by Defendants J. R. Tipler, George A. Davis and Barry M. Carter and Defendant and Cross-Plaintiff University National Stockholders Protective Committee, Inc., and had not been designated by Messrs. Robert L. Dobbs, Thomas E. Douglas, Jr., and Rudolph V. Russell. Robert L. Taylor as attorney for Defendants J. R. Tipler, George A. Davis and Barry M. Carter and Defendant and Cross-Plaintiff University National Stockholders Protective Committee, Inc., having complied with the subpoena served upon him at

great inconvenience at which times Robert L. Dobbs had failed to appear in person or by attorney, refused to be further harassed and imposed upon and refused to continue his deposition except in strict accordance with the notice and subpoena served upon him. Messrs. Robert L. Dobbs, Thomas E. Douglas, Jr., and Rudolph V. Russell refused to give their depositions and left the offices of Taylor & Taylor and have not at this time returned for the purpose of giving their depositions. Robert L. Taylor had employed a court reported and had been put to great inconvenience and has expended much time and effort because of the default of said parties.

WHEREFORE, Robert L. Taylor moves the Court to enter an order compensating him for the time spent in complying with the notice and subpoena served upon him on behalf of Defendant and Cross-Defendant Robert L. Dobbs and for all expenses incurred by him and asked that the matter be referred to a Master to determine the amount due him.

s/ Robert Taylor
Robert L. Taylor, Attorney for Defendants J. R. Tipler, George A. Davis, Barry M. Carter, Luke Borger, Vernon Goedecke, R. T. Matthews and Carl J. Gates

STATE OF TENNESSEE)
)
COUNTY OF SHELBY)

ROBERT L. TAYLOR makes oath that the allegations made in the above and foregoing motion are true.

s/ Robert L. Taylor
ROBERT L. TAYLOR

SWORN TO and subscribed before me this ..... day of October, 1963.

s/ Philip L. Peeler
Notary Public

My Commission Expires:

16 December, 1963

NOTICE

TO: Thomas E. Douglas, Jr.
Attorney for Cross-Defendant
Robert L. Dobbs
Exchange Building
Memphis, Tennessee

Please take notice that I will bring this matter on to be heard before Honorable Bailey Brown, Judge of the United States District Court, Western District of Tennessee, Western Division, at Memphis, at 2 o'clock p.m. on Friday, October 18, 1963, or as soon thereafter as counsel can be heard.

s/ Robert L. Taylor
Robert L. Taylor

CERTIFICATE OF SERVICE

I, ROBERT L. TAYLOR, hereby certify that I have this 11th day of October, 1963, served a copy of the above and foregoing motion upon Thomas E. Douglas, Jr., attorney for Cross-Defendant Robert L. Dobbs, by mailing a copy of the same to him at his office in the Exchange Building, Memphis, Tennessee, postage prepaid.

s/ Robert L. Taylor
Robert L. Taylor

AFFIDAVIT OF ANTHONY J. SABELLA

STATE OF TENNESSEE)
)
COUNTY OF SHELBY)

ANTHONY J. SABELLA, being of age and first duly sworn according to law, deposed and said:

I am a lawyer practicing law at the Memphis Bar and am a member of the law firm of Pearson, Sabella & O'Brien with offices in the Columbian Mutual Tower in Memphis, Tennessee.

On Monday, October 7, 1963, I was required to appear before Honorable Bailey Brown, Judge of the United States District Court at Memphis and I was advised that the deposition of Mr. Robert L. Taylor was to be taken at that time. I arrived at approximately 9:25 o'clock a.m. and found Mr. Taylor standing in the hallway on the third floor of the Federal Building between the Office of the United States District Court Clerk and Judge Brown's Court.

At approximately 10 o'clock a.m. every lawyer involved in this case was in attendance except Mr. Robert L. Dobbs and Mr. Thomas E. Douglas, Jr. There was no court reporter present as far as I was able to determine. At this time Mr. Taylor requested that they proceed but was advised by the other lawyers that they could not proceed until Mr. Dobbs and Mr. Douglas arrived.

Mr. Taylor remained in attendance until approximately 10:10 o'clock a.m. at which time he stated to the other lawyers that if Mr. Douglas and Mr. Dobbs had no more interest in the lawsuit and the taking of his deposition than as exhibited by their failure to appear on time, he was not going to remain. With this statement Mr.

Taylor left the bench located in the hallway where the lawyers had congregated and did not come back.

s/ Anthony J. Sabella
Anthony J. Sabella

SWORN TO and subscribed before me this the 17th day of October, 1963.

s/ Philip L. Peeler
Notary Public

My Commission Expires:

16 December, 1963

CERTIFICATE OF SERVICE

I, ROBERT L. TAYLOR, hereby certify that I have this 17th day of October, 1963, served a copy of the above and foregoing affidavit upon Thomas E. Douglas, Jr., attorney for Cross-Defendant Robert L. Dobbs, by mailing a copy of the same to him at his office in the Exchange Building, Memphis, Tennessee, postage prepaid.

s/ Robert L. Taylor
Robert L. Taylor

MOTION TO QUASH THE SUBPOENA SERVED UPON ROBERT L. TAYLOR REQUIRING HIM TO PRODUCE DOCUMENTS

Barry M. Carter, George A. Davis, J. R. Tipler, Luke Borger, Vernon Goedecke, R. T. Matthews, Carl J. Gates, Robert L. Taylor and University National Stockholders Protective Committee, Inc., respectfully move the Court to quash the subpoena issued by the Clerk of this Court on September 26, 1963, so far as it requires him to bring with him all minute books, minutes of directors and stockholders meetings, minutes of meetings of liquidating agents,

the stock books, bank account statements, books and or ledgers of account and financial records of any type whatsoever of University National Stockholders Protective Committee, Inc.

These documents and books are not germane or material to this suit in its present posture.

The subpoena was issued on behalf of Robert L. Dobbs who is not a stockholder nor a director of University National Stockholders Protective Committee, Inc., and never has been.

There is no allegation in any pleading that the funds of said corporation have been misapplied or misappropriated and there is no allegation in any pleading that anyone received stock discriminatorily as to any other stockholder or that anyone paid for stock which he has not received.

Defendant and Cross-Defendant Robert L. Dobbs has not filed a responsive plea either to the Complaint or Cross-Claim and his plea is directed solely to the authority of Robert L. Taylor to represent University National Stockholders Protective Committee, Inc., in this cause. In the present state of the pleadings said Defendant and Cross-Defendant is restricted to discovery relating solely to the issue raised by his motion which is dispositive of the Cross-Claim which he has attacked in the event he is able to establish the defense upon which he relies.

Defendant and Cross-Defendant Robert L. Dobbs has taken the pre-trial discovery depositions of Barry M. Carter, George A. Davis, J. R. Tipler, Luke Borger and Carl J. Gates all members of the board of directors of University National Stockholders Protective Committee, Inc., who have testified that at a duly called meeting of the board of directors held on May 23, 1963, at which time Mr. Dobbs was present at the special invitation of the board of di-

rectors of University National Stockholders Protective Committee, Inc., J. R. Tipler and Barry M. Carter were appointed liquidating agents to collect all monies owed University National Stockholders Protective Committee, Inc., and disburse the same among its creditors, and to bring suit in their own names or in the name of the corporation, in their discretion. Barry M. Carter and J. R. Tipler have testified that they accepted the appointment of liquidating agents and attempted to effect collection of the sum of $48,781.28 for which this Cross-Claim was filed and by peaceful means and having failed in their mission authorized Robert L. Taylor to take such action as he felt necessary under the circumstances.

The documents and records sought by Defendant Robert L. Dobbs are the private and confidential records of the corporation which are not subject to examination by anyone other than a stockholder.

The burden is upon Cross-Plaintiff University National Stockholders Protective Committee, Inc., to prove its claim and it is prepared to do so.

At the request of the directors of University National Life Insurance Company Robert L. Taylor prepared and certified the expenses incurred by University National Stockholders Protective Committee, Inc., of which Mr. Dobbs was at that time a member of the board of directors, a member of its executive committee and its Secretary.

WHEREFORE, these Defendants move the Court to quash the subpoena issued and served upon Robert L. Taylor insofar as it requires him to produce these documents.

s/ Robert L. Taylor,

Robert L. Taylor, Attorney for Defendants J. R. Tipler, George A. Davis, Barry M. Carter, Luke Borger, Vernon Goedecke, R. T. Matthews and Carl J. Gates

STATE OF TENNESSEE)
)
COUNTY OF SHELBY)

ROBERT L. TAYLOR makes oath that the allegations made in the above and foregoing motion are true.

s/ Robert L. Taylor

SWORN TO and subscribed before me this 11th day of October, 1963.

s/ Philip L. Peeler
Notary Public

My Commission Expires:

16 December, 1963

NOTICE

TO: Thomas E. Douglas, Jr.
Attorney for Cross-Defendant
Robert L. Dobbs
Exchange Building
Memphis, Tennessee

Please take notice that I will bring this matter on to be heard before Honorable Bailey Brown, Judge of the United States District Court, Western District of Tennessee, Western Division, at Memphis, at 2 o'clock p.m. on Friday, October 18, 1963, or as soon thereafter as counsel can be heard.

s/ Robert L. Taylor
Robert L. Taylor

CERTIFICATE OF SERVICE

I, ROBERT L. TAYLOR, hereby certify that I have this 11th day of October, 1963, served a copy of the above and foregoing motion upon Thomas E. Douglas, Jr., attorney for Cross-Defendant Robert L. Dobbs, by mailing a

copy of the same to him at his office in the Exchange Building, Memphis, Tennessee, postage prepaid.

s/ Robert L. Taylor
Robert L. Taylor

MOTION TO REQUIRE WITNESSES TO GIVE DEPOSITIONS

Defendants BARRY M. CARTER, GEORGE A. DAVIS and J. R. TIPLER, and Defendant and Cross-Plaintiff UNIVERSITY NATIONAL STOCKHOLDERS PROTECTIVE COMMITTEE, INC., having heretofore given notice that they would take the depositions of ROBERT L. DOBBS, RUDOLPH V. RUSSELL and THOMAS E. DOUGLAS, JR., on oral examination at the offices of Taylor & Taylor, 208 Adams Avenue, Memphis, Tennessee, on Wednesday, October 8, 1963, at 2:00 o'clock p.m., and subpoenas having been served upon them to appear at that time and place, and each of the said DOBBS, RUSSELL and DOUGLAS having refused to testify and give his deposition, Defendants BARRY M. CARTER, GEORGE A. DAVIS and J. R. TIPLER, and Defendant and Cross-Plaintiff UNIVERSITY NATIONAL STOCKHOLDERS PROTECTIVE COMMITTEE, INC., move the Court to require ROBERT L. DOBBS, RUDOLPH V. RUSSELL and THOMAS E. DOUGLAS, JR., and each of them, under penalty of being in contempt of Court, to appear at the offices of Taylor & Taylor, 208 Adams Avenue, Memphis, Tennessee, on Thursday, October 17, 1963, at 2:00 o'clock p.m. and from day

to day thereafter as may be required, to give their depositions on oral examination.

s/ Robert L. Taylor
Robert L. Taylor, 208 Adams Avenue, Memphis, Tennessee, Attorney for Barry M. Carter, George A. Davis, J. R. Tipler and University National Stockholders Protective Committee, Inc.

CERTIFICATE OF SERVICE

I, ROBERT L. TAYLOR, hereby certify that I have this 14th day of October, 1963, served a copy of the above and foregoing motion upon Messrs. Anthony J. Sabella, Charles H. O'Brien, John M. Heiskell, Robert L. Dobbs, Thomas E. Douglas, Jr., and Thomas Price, by mailing a copy of the same to them at their respective offices, postage prepaid.

s/ Robert L. Taylor
Robert L. Taylor

NOTICE TO TAKE DEPOSITIONS

To: Mr. Thomas E. Douglas, Jr.
Exchange Building
Memphis, Tennessee

Mr. Thomas Price
Union Planters Bank Building
Memphis, Tennessee

Mr. Robert L. Dobbs
Exchange Building
Memphis, Tennessee

Mr. Anthony J. Sabella
Mr. Charles H. O'Brien
Columbian Mutual Tower
Memphis, Tennessee

Mr. John M. Heiskell
Commerce Title Building
Memphis, Tennessee

Please take notice that Defendants J. R. Tipler, George A. Davis and Barry M. Carter and Cross-Plaintiff University National Stockholders Protective Committee, Inc., will take the testimony on oral examination of Messrs. Robert L. Dobbs, Thomas E. Douglas, Jr., and Rudolph V. Russell before an officer authorized to take depositions and administer oaths on Tuesday the 8th day of October, 1963, at 2 o'clock p.m. in the afternoon of that day, and thereafter from day to day as the taking of the depositions may be adjourned, at the offices of Taylor & Taylor at 208 Adams Avenue in Memphis, Tennessee, at which time and place you are notified to appear and take such part in the examination as you may be advised and as shall be fit and proper.

s/ Robert L. Taylor

Attorney for Defendants J. R. Tipler, George A. Davis and Barry M. Carter and Cross-Plaintiff University National Stockholders Protective Committee, Inc.

CERTIFICATE OF SERVICE

I, ROBERT L. TAYLOR, hereby certify that a copy of the foregoing notice to take the depositions of Messrs. Robert L. Dobbs, Thomas E. Douglas, Jr., and Rudolph V. Russell was served upon Mr. Robert L. Dobbs, Mr. Thomas E. Douglas, Jr., Mr. John M. Heiskell, Mr. Thomas Price, Mr. Anthony J. Sabella and Mr. Charles H. O'Brien, attorneys of record for Plaintiffs, the various Defendants and Cross-Defendants, by mailing a copy of the same to them at their respective offices in Memphis, Tennessee, postage prepaid.

This the 1st day of October, 1963.

s/ Robert L. Taylor

ROBERT L. TAYLOR

NOTICE TO TAKE DEPOSITIONS

To: Mr. Robert L. Taylor
Mr. Lloyd C. Kirkland, Jr.
Mr. Robert E. Joyner
208 Adams Avenue
Memphis, Tennessee

Mr. Thomas Price
Ganada, Russell & Turner
Union Planters Bank Bldg.
Memphis, Tennessee

Mr. Anthony J. Sabella
Mr. Charles H. O'Brien
1401 Columbian Mutual Tower
Memphis, Tennessee

Mr. John M. Heiskell
1325 Commerce Title Bldg.
Memphis, Tennessee

PLEASE TAKE NOTICE that the Cross-Defendant, ROBERT L. DOBBS, will take the testimony on oral examination of Messrs. J. R. Tipler, Robert L. Taylor, George A. Davis, Barry M. Carter, J. D. McElroy, Luke Borger, Vernon Goedecke, R. T. Matthews, Carl J. Gates, before an officer authorized to take depositions on Wednesday, the 2nd day of October, 1963, commencing at 9:30 A.M., in the Clerk's Office of the District Court of the United States, Western Division, Memphis, Tennessee, and continuing from day to day until completed. You are notified to appear and take such part in the examination as shall be proper.

s/ Thomas E. Douglas, Jr.
THOMAS E. DOUGLAS, JR.,
Attorney for Cross-Defendant, Robert L. Dobbs. Exchange Bldg., Memphis, Tennessee

CERTIFICATION

I certify that a copy of the foregoing Notice to Take Depositions was served on Anthony J. Sabella and Charles H. O'Brien, Attorneys for Plaintiffs, Robert L. Taylor, Lloyd C. Kirkland and Robert E. Joyner, Attorneys for Cross-Complainants; Thomas Price, Attorney for Marshall C. Scott, John M. Heiskell, Attorney for various Defendants and Cross-defendants, by placing copies, postage prepaid, in the United States mail, directed to their various offices in Memphis, Tennessee, this the 26 day of SEPTEMBER, 1963.

.....

THOMAS E. DOUGLAS, JR.